A BILL TO BE ENTITLED

1   AN ACT

2   relating to the regulation of private process servers; providing

3   penalties.

4   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5   SECTION 1.   The Civil Practice and Remedies Code is amended

6   by adding Title 8 to read as follows:

7   TITLE 8.   CIVIL PROCESS

8   CHAPTER 191.   PRIVATE PROCESS SERVERS

9   SUBCHAPTER A.   GENERAL PROVISIONS

10   Sec. 191.001.   DEFINITIONS.   In this chapter:

11   (1)   "Civil court" includes:

12   (A)   a civil district court;

13   (B)   a family district court;

14   (C)   a county court at law;

15   (D)   a probate court;

16   (E)   a justice court; and

17   (F)   a small claims court.

18   (2)   "Civil process" means a citation, a temporary

19   restraining order, a notice, a writ of garnishment, a writ of

20   forcible entry and detainer, or a subpoena for a trial or for an

21   oral deposition.   The term does not include service of written

22   interrogatories or a writ that requires the actual taking of

23   possession of a person, property, or thing.

24   (3)   "Commission" means the Texas Commission of

1 Licensing and Regulation.

2   (4) "Constable" means a constable, deputy constable,

3 or reserve deputy constable.

4   (5) "Department" means the Texas Department of

5 Licensing and Regulation.

6   (6) "Executive director" means the executive director

7 of the department.

8   (7) "License holder" means an individual who has

9 complied with the licensing requirements of this chapter and has

10 been issued a license by the department.

11   (8) "Person" means an individual.

12   (9) "Public servant" has the meaning assigned by

13 Section 1.07, Penal Code.

14   (10) "Registered agent" means an individual who has

15 complied with the registration requirements adopted under this

16 chapter and has been issued an agent registration by the

17 department.

18   (11) "Sheriff" means a sheriff, deputy sheriff, or

19 reserve deputy sheriff.

20   Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter

21 does not apply to a sheriff or constable engaged in the discharge of

22 that person's official duties. A sheriff or constable who serves

23 civil process other than in the performance of official duties must

24 be licensed or registered under this chapter.

25   (b) This chapter does not limit or restrict the service of

26 process in this state as provided by a court order.

27   (c) This chapter does not apply to a court reporter

1 certified under Chapter 52, Government Code.

2   [Sections 191.003-191.050 reserved for expansion]

3   SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

4   Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a) A

5 person may not serve civil process in this state unless the person

6 is licensed or registered under this chapter.

7   (b) A person who is not a license holder or registered agent

8 and who is not exempt under Section 191.002 may serve outside this

9 state a civil process issued by a civil court of this state if the

10 person is:

11   (1) authorized by law, rule, or court order in the

12 person's jurisdiction to serve process;

13   (2) a disinterested person competent to make an oath

14 of that fact; and

15   (3) has the return of service acknowledged by an

16 officer authorized to administer oaths in the jurisdiction in which

17 the civil process was served.

18   Sec. 191.052. LICENSE APPLICATION; TEMPORARY LICENSE. (a)

19 An applicant for an initial process server license under this

20 chapter must submit a sworn application on a form prescribed by the

21 commission. To be eligible for a license under this section, an

22 applicant must:

23   (1) be at least 18 years of age;

24   (2) not have been convicted of a misdemeanor involving

25 moral turpitude or a felony;

26   (3) submit the nonrefundable application fee and the

27 license fee; and

1   (4) comply with the requirements adopted under

2 Subsection (b).

3   (b) Each license applicant must provide proof to the

4 department in a manner acceptable to the department of:

5   (1) completion of a department-approved seminar on

6 civil process consisting of at least eight hours of instruction;

7 and

8   (2) maintenance of insurance coverage as required by

9 rules adopted by the commission.

10   (c) The department shall issue a temporary license not later

11 than the 30th day after the date an applicant submits evidence

12 satisfactory to the department that the applicant has properly

13 completed the application, has paid all required fees, and meets

14 all of the qualifications established by this chapter and by rule of

15 the commission. A temporary license is valid for not more than 90

16 days after the date of issuance. If, on completion of the license

17 application process, the commission denies an application for a

18 license, the applicant shall return the applicant's temporary

19 license and immediately stop serving process under this chapter.

20   Sec. 191.053. AGENT REGISTRATION. (a) A person registered

21 under this chapter as the agent of a license holder may execute

22 civil process under this chapter on behalf of the license holder.

23   (b) An applicant for an agent registration shall submit a

24 sworn application to the department on a form prescribed by the

25 commission. To be eligible for registration under this section, an

26 applicant must:

27   (1) be at least 18 years of age;

1   (2) not have been convicted of a misdemeanor involving

2 moral turpitude or a felony; and

3   (3) submit the nonrefundable application fee and the

4 registration fee.

5   Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Each

6 applicant for a process server license or an agent registration

7 under this chapter shall disclose to the department in the manner

8 prescribed by the commission any conviction of the applicant for a

9 misdemeanor involving moral turpitude or a felony.

10   (b) On receipt of an original application for a process

11 server license or agent registration, the department shall conduct

12 a thorough background investigation of each individual applicant to

13 determine whether the applicant is qualified under this chapter.

14 The investigation must include:

15   (1) the submission of fingerprints by the applicant

16 for processing through appropriate local, state, and federal law

17 enforcement agencies; and

18   (2) the examination by the department of law

19 enforcement records maintained by a local, state, or federal law

20 enforcement agency.

21   (c) A background check under this section and the

22 department's consideration of any criminal conviction is governed

23 by:

24   (1) this chapter;

25   (2) Sections 411.093 and 411.122, Government Code; and

26   (3) Chapter 53, Occupations Code.

27   (d) The conviction of an applicant of a crime does not

automatically:

            (1)   disqualify the applicant;

            (2)   require revocation of a license or registration; or

            (3)   require denial of an application for renewal of a license or registration.

Sec. 191.055.   ISSUANCE OF LICENSES AND REGISTRATIONS.   (a) The department shall issue a process server license or an agent registration to an applicant who complies with the appropriate requirements of this chapter, passes the criminal history record check, and pays all required fees.

(b)   Except as provided by Subsection (c), the department shall issue the license or registration not later than the 60th day after the date on which the application is received by the department.

(c)   If the department is notified by the Department of Public Safety that a criminal history record check affecting an applicant will not be completed within the 60 days prescribed by Subsection (b), the department shall notify the applicant of the delay.

Sec. 191.056.   INSURANCE REQUIREMENT.   The commission by rule shall prescribe the insurance coverage that a process server license holder must maintain to be eligible for a license under this chapter.

Sec. 191.057.   TERM OF LICENSES AND REGISTRATION; RENEWAL; AGENT TERMINATION.   (a) A license or an agent registration issued under this chapter expires on the second anniversary of the date of

1 issuance.

2 (b) The department shall send a renewal application to each

3 license holder or registered agent not later than the 45th day

4 before the date of expiration of the license or registration.

5 (c) A license holder or registered agent may renew the

6 license or registration by submitting to the department before the

7 expiration date, on a form prescribed by the commission, a renewal

8 application accompanied by the renewal fee. To renew the license or

9 registration, each license holder and registered agent must also

10 present evidence satisfactory to the department of completion,

11 before the expiration of the license or registration, of a

12 department-approved continuing education seminar consisting of at

13 least eight hours of instruction in civil process.

14 (d) A license holder shall notify the department in writing

15 not later than the 14th day after the date on which the employment

16 of a registered agent by the license holder is terminated.

17 [Sections 191.058-191.100 reserved for expansion]

18 SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS AND REGISTERED AGENTS

19 Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS AND

20 REGISTERED AGENTS. (a) A license holder or registered agent may

21 serve civil process issued by the courts of this state in the manner

22 provided by law for service by sheriffs and constables. The person

23 may serve the process on any day of the week anywhere in this state.

24 (b) A license holder or registered agent may determine the

25 location of an individual for the purpose of serving civil process.

26 (c) A license holder or registered agent may serve a writ of

27 garnishment, but may not serve a writ of attachment, a writ of

1 sequestration, or a distress warrant.

2 (d) A license holder or registered agent may not serve a

3 civil process in any action in which the license holder or

4 registered agent is an interested party.

5 (e) A license holder or registered agent who is employed by

6 an attorney or a law firm may not serve a civil process relating to

7 an action in which the employing attorney or law firm is counsel to

8 a party.

9 Sec. 191.102. COSTS. A fee charged and collected by a

10 license holder or registered agent for service of process may be

11 charged as costs in a judicial proceeding.

12 Sec. 191.103. PUBLIC SERVANT; OFFICER OF COURT. Each

13 license holder and registered agent shall be considered to be a

14 public servant when performing duties related to serving process

15 and considered to be an officer of the civil courts of this state,

16 but may not be considered to be a peace officer based on that

17 license or registration. An assault on a license holder or

18 registered agent shall be treated as an assault on a public servant.

19 Sec. 191.104. IDENTIFICATION NUMBER. (a) The department

20 shall issue to each license holder and registered agent a unique

21 identification number. The license holder or registered agent

22 shall list that unique number on each return of service made by that

23 person that is filed with the clerk of the appropriate court.

24 (b) The department shall issue to each license holder and

25 registered agent a photo identification card with the person's

26 unique identification number on the card. The department shall

27 determine the size, design, and content of the identification card.

1 The card remains the property of the state and must be returned on

2 demand by the department.

3   [Sections 191.105-191.150 reserved for expansion]

4   SUBCHAPTER D. DEPARTMENT ENFORCEMENT

5   Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission

6 may deny, suspend, or revoke a license or registration, as

7 appropriate, and the commission may impose an administrative

8 penalty under Subchapter F, Chapter 51, Occupations Code, on a

9 finding that:

10   (1) a license holder has:

11   (A) failed to maintain the insurance coverage

12 required by this chapter;

13   (B) refused to permit an examination by the

14 department of the records required to be maintained by a license

15 holder under rules adopted under this chapter; or

16   (C) allowed a person to serve process who the

17 license holder knows is not legally authorized to do so; or

18   (2) a license holder or registered agent has:

19   (A) violated this chapter, a rule adopted under

20 this chapter, or an order of the executive director or commission;

21   (B) knowingly made a false or fraudulent return

22 of service; or

23   (C) been convicted of a felony or misdemeanor

24 that directly relates to the duties and responsibilities involved

25 in performing the duties of a process server.

26   (b) Proceedings for the denial, revocation, or suspension

27 of a license or registration, for the imposition of an

1   administrative penalty, and for an appeal from the proceeding are

2   governed by Chapter 51, Occupations Code, and Chapter 2001,

3   Government Code.

4   [Sections 191.152-191.200 reserved for expansion]

5   SUBCHAPTER E. PENALTIES

6   Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an

7   offense if the person practices as a process server or registered

8   agent in violation of this chapter or a rule adopted under this

9   chapter. An offense under this subsection is a felony of the third

10   degree.

11   (b) A person commits an offense if the person knowingly or

12   intentionally falsifies a return of civil process. An offense

13   under this subsection is a Class A misdemeanor unless the person's

14   intent is to defraud or harm another, in which event the offense is

15   a state jail felony.

16   SECTION 2. Notwithstanding Section 191.052, Civil Practice

17   and Remedies Code, as added by this Act, a person who provides proof

18   to the Texas Department of Licensing and Regulation in a manner

19   satisfactory to that department of at least two years' experience

20   in serving civil process before the effective date of this Act is

21   entitled to a license without complying with the educational

22   requirement if the person meets all other requirements under that

23   section.

24   SECTION 3. (a) Except as provided by Subsection (b) of this

25   section, Chapter 191, Civil Practice and Remedies Code, as added by

26   this Act, takes effect September 1, 2005.

27   (b) Sections 191.051 and 191.201, Civil Practice and

1 Remedies Code, as added by this Act, take effect March 1, 2006.

2   SECTION 4.   Except as provided by Section 3 of this Act, this

3 Act takes effect September 1, 2005.

BILL ANALYSIS

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In 1978, the Texas Supreme Court gave private process servers the authority to deliver and serve subpoenas. The court further extended the authority of the servers by giving them authority to deliver all citations under rule 103, Texas Rules of Civil Procedure. As a result, numerous private process serving companies have been established throughout Texas. There is no uniform requirement for background checks or liability insurance to protect the public against fraudulent servers. As proposed, S.B. 165 establishes the regulation and licensing of private process servers through the Texas Commission of Licensing and Regulation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Civil Practice and Remedies Code by adding Title 8, as follows:

TITLE 8. CIVIL PRACTICES

CHAPTER 191. PRIVATE PROCESS SERVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. Defines "civil court," "civil process," "commission," "constable," "department," "executive director," "license holder," "person," "public servant," "registered agent," and "sheriff."

Sec. 191.002. APPLICABILITY OF CHAPTER. Sets forth applicability of this chapter.

[Reserves Sections 191.003-191.050 for expansion.]

SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a) Prohibits a person from serving civil process in this state unless the person is licensed or registered under this chapter.

> (b) Authorizes a person who is not a license holder or registered agent and who is not exempt under Section 191.002 to serve outside this state a civil process issued by a civil court of this state if the person meets certain requirements.

Sec. 191.052. LICENSE APPLICATION; TEMPORARY LICENSE. (a) Requires an applicant for an initial process server license to submit a sworn application on a form prescribed by the Texas Commission of Licensing and Regulation (commission). Requires an applicant to meet certain criteria to be eligible for a license.

(b) Requires each license applicant to provide proof of seminar instruction and insurance coverage to the Texas Department of Licensing and Regulation (department).

(c) Requires the department to issue a temporary license, valid for 90 days, not later than the 30th day after the date an applicant submits satisfactory evidence that the applicant has met all application requirements. Provides that, if the commission denies an application for license, the applicant is required to return the temporary license immediately and stop serving process.

Sec. 191.053. AGENT REGISTRATION. (a) Authorizes the agent of a license holder to execute civil process on behalf of the license holder.

(b) Requires an applicant for an agent registration to submit a sworn application to the department on a form prescribed by the commission. Requires an applicant to meet certain criteria to be eligible for registration.

Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Requires each applicant for a process server license or an agent registration to disclose to the department any conviction of the applicant for a misdemeanor involving moral turpitude or a felony.

(b) Requires the department to conduct a thorough background investigation of each individual applicant on receipt of an original application. Provides that the investigation must include certain aspects.

(c) Provides that a background check under this section and the department's consideration of any criminal conviction is governed by certain laws.

(d) Provides that the conviction of an applicant of a crime does not automatically disqualify the applicant, require the revocation of a license or registration, or require the denial of an application for renewal of a license or registration.

Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS. (a) Requires the department to issue a process server license or an agent registration to an applicant who complies with the appropriate requirements of this chapter, passes the criminal history record check, and pays all required fees.

(b) Requires the department to issue licenses or registrations not later than the 60th day after the date on which the application is received, except as provided by Subsection (c).

(c) Requires the department to notify the applicant of a delay in the event that the Department of Public Safety cannot complete the criminal history record check within 60 days.

Sec. 191.056. INSURANCE REQUIREMENT. Requires the commission, by rule, to prescribe the insurance coverage that a process server license holder must maintain to be eligible for a license.

Sec. 191.057. TERM OF LICENSES AND REGISTRATION; RENEWAL; AGENT TERMINATION. (a) Provides timeline for license or agent registration expiration.

(b) Requires the department to send a renewal application to each license holder or registered agent not later than the 45th day before the date of expiration.

(c) Sets forth guidelines for the renewal of a license or registration.

(c) Requires a license holder to notify the department in writing not later than the 14th day after the date on which the employment of a registered agent by the license holder is terminated.

[Reserves Sections 191.058-191.100 for expansion.]

SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS AND REGISTERED AGENTS

Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS AND REGISTERED AGENTS. (a) Authorizes a license holder or registered agent to serve civil process issued by the courts of this state in the manner provided by law for service by sheriffs and constables on any day of the week anywhere in the state.

(b) Authorizes a license holder or registered agent to determine the location of an individual for the purpose of serving civil process.

(c) Authorizes a license holder or registered agent to serve a writ of garnishment but prohibits said individual from serving a writ of attachment, a writ of sequestration, or a distress warrant.

(d) Prohibits a license holder or registered agent from serving a civil process in any action in which said person is an interested party.

(e) Prohibits a license holder or registered agent who is employed by an attorney or a law firm from serving a civil process relating to an action in which the employer is counsel to a party.

Sec. 191.102. COSTS. Provides that a fee charged and collected by a license holder or registered agent for service of process may be charged as costs in a judicial proceeding.

Sec. 191.103. PUBLIC SERVANT; OFFICER OF COURT. Requires each license holder and registered agent to be considered to be a public servant when performing duties related to serving process and considered to be an officer of the civil courts of this state, but may not be considered to be a peace officer based on that license or registration. Requires an assault on a license holder or registered agent to be treated as an assault on a public servant.

Sec. 191.104. IDENTIFICATION NUMBER. (a) Requires the department to issue a unique identification number to each license holder and registered agent who shall then list that number on each return of service made by that person that is filed with the clerk of the appropriate court.

(b) Sets forth requirements for the issuance, content, and return of personal identification cards.

[Reserves Sections 191.105-191.150 for expansion.]

SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. DISCIPLINARY ACTIONS. (a) Authorizes the commission to deny, suspend, or revoke a license or registration and to impose an administrative penalty under Subchapter F, Chapter 51 (Administrative Penalty), Occupations Code, on a finding that a license holder or registered agent has failed to meet certain requirements.

(b) Provides that proceedings for the denial, revocation, or suspension of a license or registration, for the imposition of an administrative penalty, and for an appeal from the proceeding are governed by Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, and Chapter 2001 (Administrative Procedure), Government Code.

[Reserves Sections 191.152-191.200 for expansion.]

SUBCHAPTER E. PENALTIES

Sec. 191.201. CRIMINAL PENALTIES. (a) Provides that a person commits an offense if the person practices as a process server or registered agent in violation of this chapter and that such an offense is a felony of the third degree.

(b) Provides that a person commits an offense if the person knowingly or intentionally falsifies a return of civil process and that such an offense is a Class A misdemeanor or, in certain situations, a state jail felony.

SECTION 2. Provides that a person who provides proof to the Texas Department of Licensing and Regulation of at least two years' experience in serving civil process before the effective date of this Act is entitled to a license without complying with the educational requirement if the person meets all other requirements.

SECTION 3. (a) Provides that, except as set forth in Subsection (b) of this section, Chapter 191, Civil Practice and Remedies Code, takes effect September 1, 2005.

(b) Provides that Sections 191.051 and 191.201, Civil Practices and Remedies Code, as added by this Act, take effect March 1, 2006.

SECTION 4. Effective date: September 1, 2005, except as provided by SECTION 3 of this Act.

1-1	By: Wentworth	S.B. No. 165

1-2   (In the Senate - Filed January 10, 2005; February 1, 2005,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 April 11, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 1; April 11, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 165   By: Wentworth

1-8   A BILL TO BE ENTITLED
1-9   AN ACT

1-10 relating to the regulation of private process servers; providing
1-11 penalties.
1-12   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-13   SECTION 1. The Civil Practice and Remedies Code is amended
1-14 by adding Title 8 to read as follows:
1-15   TITLE 8. CIVIL PROCESS
1-16   CHAPTER 191. PRIVATE PROCESS SERVERS
1-17   SUBCHAPTER A. GENERAL PROVISIONS
1-18   Sec. 191.001. DEFINITIONS. In this chapter:
1-19   (1) "Civil court" includes:
1-20   (A) a civil district court;
1-21   (B) a family district court;
1-22   (C) a county court at law;
1-23   (D) a probate court;
1-24   (E) a justice court; and
1-25   (F) a small claims court.
1-26   (2) "Civil process" means all process issued or
1-27 sanctioned by a civil court.
1-28   (3) "Commission" means the Texas Commission of
1-29 Licensing and Regulation.
1-30   (4) "Constable" means a constable, deputy constable,
1-31 or reserve deputy constable.
1-32   (5) "Department" means the Texas Department of
1-33 Licensing and Regulation.
1-34   (6) "Executive director" means the executive director
1-35 of the department.
1-36   (7) "Person" means an individual.
1-37   (8) "Private process server" means a person who, on
1-38 behalf of a private process service business, serves or offers to
1-39 serve civil process.
1-40   (9) "Private process service business" means a person
1-41 or business entity registered with the department as a business
1-42 that serves or offers to serve civil process.
1-43   (10) "Public servant" has the meaning assigned by
1-44 Section 1.07, Penal Code.
1-45   (11) "Sheriff" means a sheriff, deputy sheriff, or
1-46 reserve deputy sheriff.
1-47   Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter
1-48 does not apply to a sheriff or constable engaged in the discharge of
1-49 that person's official duties. A sheriff or constable who serves
1-50 civil process other than in the performance of official duties must
1-51 be licensed or registered under this chapter.
1-52   (b) This chapter does not apply to an investigator who is a
1-53 peace officer employed by a county or district attorney in this
1-54 state engaged in the discharge of that person's official duties or
1-55 in the delivery of nonjudicial notices. An investigator described
1-56 by this subsection who serves civil process other than in the
1-57 performance of official duties must be licensed or registered under
1-58 this chapter.
1-59   (c) This chapter does not limit or restrict the service of
1-60 process in this state as provided by a court order in a specific
1-61 civil case in which the presiding magistrate or judge has
1-62 determined the credibility of the person designated to serve the
1-63 process. A court may not issue a blanket or standing order

2-1   authorizing service of process.
2-2   (d) This chapter does not apply to a court reporter
2-3   certified under Chapter 52, Government Code.
2-4   [Sections 191.003-191.050 reserved for expansion]
2-5   SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS
2-6   Sec. 191.051. LICENSE OR REGISTRATION REQUIRED.   (a)
2-7   Except as provided by Section 191.002, a person may not serve civil
2-8   process in this state unless the person is licensed under this
2-9   chapter and serves the process through a private process service
2-10   business.
2-11   (b) A person who is not a license holder and who is not
2-12   exempt under Section 191.002 may serve outside this state a civil
2-13   process issued by a civil court of this state if the person:
2-14   (1) is authorized by law, rule, or court order in the
2-15   person's jurisdiction to serve process;
2-16   (2) is a disinterested person competent to make an
2-17   oath of that fact; and
2-18   (3) has the return of service acknowledged by an
2-19   officer authorized to administer oaths in the jurisdiction in which
2-20   the civil process was served.
2-21   (c) A person or business entity may not represent that the
2-22   person or business entity is a private process server or private
2-23   process service business unless the person is licensed, or the
2-24   business entity is registered, under this chapter.
2-25   Sec. 191.052. PRIVATE   PROCESS   SERVICE   BUSINESS
2-26   APPLICATION. An applicant for registration as a private process
2-27   service business must submit an application on a form prescribed by
2-28   the commission. To be eligible to register under this section, the
2-29   applicant must:
2-30   (1) submit the nonrefundable application fee; and
2-31   (2) have a person licensed under this chapter assigned
2-32   as the responsible party for the business.
2-33   Sec. 191.053. LICENSE APPLICATION. (a) An applicant for a
2-34   process server license under this chapter must submit an
2-35   application on a form prescribed by the commission. To be eligible
2-36   for a license under this section, an applicant must:
2-37   (1) be at least 18 years of age;
2-38   (2) demonstrate   the   applicant's   honesty,
2-39   trustworthiness, and integrity;
2-40   (3) submit the nonrefundable application fee; and
2-41   (4) comply with the requirements adopted under
2-42   Subsection (b).
2-43   (b) Each license applicant must provide proof to the
2-44   department in a manner acceptable to the department of completion
2-45   of a department-approved 10-hour course on civil process and
2-46   regulation and rules consisting of at least eight hours of
2-47   instruction on service of process and two hours of instruction on
2-48   department regulation and rules.
2-49   Sec. 191.054. CRIMINAL HISTORY RECORD CHECK.   (a) Each
2-50   applicant for a process server license under this chapter shall
2-51   disclose to the department in the manner prescribed by the
2-52   commission any conviction of the applicant for a misdemeanor
2-53   involving moral turpitude or a felony.
2-54   (b) On receipt of an original application for issuance of a
2-55   process server license, the department shall conduct a thorough
2-56   background investigation of each individual applicant to determine
2-57   whether the applicant is qualified under this chapter.   The
2-58   investigation must include:
2-59   (1) the submission of fingerprints by the applicant
2-60   for processing through appropriate local, state, and federal law
2-61   enforcement agencies; and
2-62   (2) the examination by the department of law
2-63   enforcement records maintained by a local, state, or federal law
2-64   enforcement agency.
2-65   (c) On receipt of an application for renewal of a process
2-66   server license, the department shall conduct a background
2-67   investigation of each individual applicant to determine whether the
2-68   applicant is qualified under this chapter. The investigation must
2-69   include examination by the department of law enforcement records

3-1 maintained by a local, state, or federal law enforcement agency.
3-2 (d) A background check under this section and the
3-3 department's consideration of any criminal conviction is governed
3-4 by:
3-5 (1) this chapter;
3-6 (2) Sections 411.093 and 411.122, Government Code; and
3-7 (3) Chapter 53, Occupations Code.
3-8 (e) The conviction of an applicant of a crime does not
3-9 automatically:
3-10 (1) disqualify the applicant;
3-11 (2) require revocation of a license or registration;
3-12 or
3-13 (3) require denial of an application for renewal of a
3-14 license or registration.
3-15 (f) An application for issuance or renewal of a license by a
3-16 person who has pled guilty to a crime and been placed on deferred
3-17 adjudication in any jurisdiction shall be considered on the basis
3-18 of the criteria set forth in Subsections (d) and (e).
3-19 Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS.
3-20 (a) The department shall issue a business registration or process
3-21 server license to an applicant who complies with the appropriate
3-22 requirements of this chapter, passes the criminal history record
3-23 check, as applicable, and pays all required fees.
3-24 (b) Except as provided by Subsection (c), the department
3-25 shall issue the license or registration not later than the 60th day
3-26 after the date on which the application is received by the
3-27 department.
3-28 (c) If the department is notified by the Department of
3-29 Public Safety that a criminal history record check affecting an
3-30 applicant will not be completed within the 60 days prescribed by
3-31 Subsection (b), the department shall notify the applicant of the
3-32 delay.
3-33 Sec. 191.056. TERM OF LICENSE AND REGISTRATION; RENEWAL; ·
3-34 RESPONSIBLE PARTY TERMINATION. (a) A license or business
3-35 registration issued under this chapter expires on the first
3-36 anniversary of the date of issuance.
3-37 (b) The department shall send a renewal notice to each
3-38 license holder and registered business not later than the 90th day
3-39 before the date of expiration of the license or registration.
3-40 (c) A license holder or registered business may renew the
3-41 license or registration by submitting to the department before the
3-42 expiration date, on a form prescribed by the commission, a renewal
3-43 application accompanied by the renewal fee. To renew a license, the
3-44 license holder must also present evidence satisfactory to the
3-45 department of completion, before the expiration of the license, of
3-46 a department-approved continuing education seminar consisting of
3-47 at least four hours of instruction in civil process and two hours of
3-48 instruction in department rules.
3-49 (d) A registered business shall notify the department in
3-50 writing not later than the 14th day after the date on which the
3-51 employment of a private process server designated as a responsible
3-52 party is terminated.
3-53 [Sections 191.057-191.100 reserved for expansion]
3-54 SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS
3-55 Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) A
3-56 license holder may serve civil process issued by the courts of this
3-57 state in the manner provided by law for service by sheriffs and
3-58 constables. The person may serve the process anywhere in this
3-59 state.
3-60 (b) A license holder may determine the location of an
3-61 individual for the purpose of serving civil process.
3-62 (c) A license holder may serve all civil process, except for
3-63 a writ of attachment, writ of sequestration, distress warrant, writ
3-64 of forcible entry and detainer, temporary ex parte protective
3-65 order, protective order, writ of habeas corpus, writ of mandamus,
3-66 trial of right of property, turnover order, or writ of certiorari.
3-67 (d) A license holder may not serve a civil process in any
3-68 action in which the license holder or the registered business that
3-69 employs the license holder is an interested party.

4-1   (e) An employee of an attorney or a law firm may not serve a
4-2 civil process, except a subpoena for a trial or for an oral
4-3 deposition, relating to an action in which the employing attorney
4-4 or law firm is counsel to a party.
4-5   (f) A license holder may not have a firearm on the license
4-6 holder's person when in the act of serving civil process, unless the
4-7 license holder is also a peace officer or an honorably retired peace
4-8 officer authorized to carry a firearm. A weapon may not be visible
4-9 during the delivery of civil process.
4-10   (g) A license holder may not be assigned as the responsible
4-11 party for more than one registered business in which the person does
4-12 not have an ownership interest of more than 50 percent of the
4-13 business.
4-14   Sec. 191.102. COSTS. A fee charged and collected by a
4-15 license holder or registered business for service of process may be
4-16 charged as costs in a judicial proceeding. Fees charged by a
4-17 license holder or registered business for service of process
4-18 exceeding the service of process fees set by the commissioners
4-19 court in the county in which the case is pending, may not be charged
4-20 as costs in a judicial proceeding unless otherwise approved by the
4-21 judge presiding over the case.
4-22   Sec. 191.103. PUBLIC SERVANT. An assault on a license
4-23 holder during the delivery of civil process shall be treated as an
4-24 assault on a public servant. A county is not liable for the actions
4-25 of a license holder unless the license holder is an employee of the
4-26 county.
4-27   Sec. 191.104. IDENTIFICATION NUMBER. (a) The department
4-28 shall issue to each license holder and registered business a unique
4-29 identification number. The license holder and registered business
4-30 shall provide that unique number with each return of service made by
4-31 that person for the registered business that is filed with the clerk
4-32 of the appropriate court.
4-33   (b) The unique number of the private process server and the
4-34 registered business on behalf of which the server is working must be
4-35 provided to each person served. A license holder shall include the
4-36 license holder's unique identification number on each valid process
4-37 return and on each delivery copy of process served. Failure to
4-38 include the registered business's or person's unique identification
4-39 number on each valid process return does not render the service of
4-40 process invalid.
4-41   (c) The department shall issue to each license holder a
4-42 photo identification card with the person's unique identification
4-43 number on the card. The department shall determine the size,
4-44 design, and content of the identification card. The card remains
4-45 the property of the state and must be returned on demand by the
4-46 department.
4-47   (d) A license holder shall produce the license holder's
4-48 identification card to any person requesting it during the
4-49 performance of service of process.
4-50   (e) An identification card, badge, insignia, seal, patch,
4-51 or other form of identification that may be construed to be that of
4-52 a peace officer or employee of a county or state agency may not be
4-53 worn or displayed by a license holder.
4-54   Sec. 191.105. RETURN OF SERVICE OF PROCESS. A registered
4-55 business or license holder shall return to the issuing court a sworn
4-56 return of service verifying the truthfulness of the return for any
4-57 process served in this state. The return of service must be
4-58 returned to the issuing court not later than the fifth business day
4-59 after the date service is completed.
4-60   [Sections 191.106-191.150 reserved for expansion]
4-61   SUBCHAPTER D. DEPARTMENT ENFORCEMENT
4-62   Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission
4-63 may deny, suspend, or revoke a license or registration, as
4-64 appropriate, and the commission may impose an administrative
4-65 penalty under Subchapter F, Chapter 51, Occupations Code, on a
4-66 finding that:
4-67   (1) a registered business has:
4-68   (A) refused to permit an examination by the
4-69 department of the records required to be maintained by a registered

5-1 business under rules adopted under this chapter; or
5-2   (B) allowed a person to serve process on the
5-3 registered business's behalf while knowing that the person is not
5-4 legally authorized to do so; or
5-5   (2) a license holder has:
5-6   (A) violated this chapter, a rule adopted under
5-7 this chapter, or an order of the executive director or commission;
5-8   (B) knowingly made a false or fraudulent return
5-9 of service; or
5-10   (C) been convicted of a misdemeanor that directly
5-11 relates to the duties and responsibilities involved in performing
5-12 the duties of a process server or of any felony.
5-13   (b) Proceedings for the denial, revocation, or suspension
5-14 of a license or registration, for the imposition of an
5-15 administrative penalty, and for an appeal from the proceeding are
5-16 governed by Chapter 51, Occupations Code, and Chapter 2001,
5-17 Government Code.
5-18   Sec. 191.152. SUMMARY SUSPENSION. (a) On receiving
5-19 written notice from the Department of Public Safety of the State of
5-20 Texas or another law enforcement agency that a person licensed
5-21 under this chapter has been arrested for or charged with an offense
5-22 constituting a Class B misdemeanor or a greater offense, the
5-23 department may summarily suspend the person's license.
5-24   (b) To initiate a proceeding under Subsection (a), the
5-25 department must serve notice to the person and to any registered
5-26 business that has assigned the person as a responsible party. The
5-27 notice must:
5-28   (1) inform the person of the right to a hearing on the
5-29 summary suspension;
5-30   (2) state the alleged violations that constitute the
5-31 grounds for the summary suspension;
5-32   (3) indicate the date and place of the hearing on the
5-33 summary suspension, which must be not earlier than the fifth day and
5-34 not later than the 14th day after the date notice is issued;
5-35   (4) be personally served on the person or mailed to the
5-36 person by certified or registered mail, return receipt requested,
5-37 to the individual's mailing address as it appears on department
5-38 records; and
5-39   (5) be sent by registered or certified mail, return
5-40 receipt requested, to any registered business required to be
5-41 notified.
5-42   (c) The suspension is effective at the time the notice is
5-43 served.
5-44   (d) At the summary suspension hearing, the individual may
5-45 show cause why, pending final hearing on the suspension, the
5-46 suspension should not continue.
5-47   (e) A final hearing may be scheduled at a time after the
5-48 final disposition of the charges that resulted in the summary
5-49 suspension.
5-50   (f) Chapter 2001, Government Code, does not apply to a
5-51 proceeding under this section, except for the final administrative
5-52 hearing.
5-53   (g) The dismissal of a complaint, information, or
5-54 indictment, or an acquittal, releases the person from the automatic
5-55 grounds for summary suspension under this section.
5-56   [Sections 191.153-191.200 reserved for expansion]
5-57   SUBCHAPTER E. PENALTIES
5-58   Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an
5-59 offense if the person practices as a private process server and is
5-60 not authorized to do so under this chapter. An offense under this
5-61 subsection is a Class A misdemeanor.
5-62   (b) A person commits an offense if the person knowingly or
5-63 intentionally falsifies a return of civil process or fails to
5-64 produce the identification card to a person requesting it during
5-65 the service of process. An offense under this subsection is a Class
5-66 A misdemeanor unless the person's intent is to defraud or harm
5-67 another, in which event the offense is a state jail felony.
5-68   SECTION 2. Subsection (d), Section 154.005, Local
5-69 Government Code, is amended to read as follows:

6-1   (d)   A constable may receive, in addition to Subsection (c),
6-2 all fees, commissions, or payments for delivering notices required
6-3 by Section 24.005, Property Code, relating to eviction actions.
6-4 Notices may only be delivered when not in conflict with the official
6-5 duties and responsibilities of the constable.   A constable
6-6 delivering said notices must not be wearing upon his or her person a
6-7 uniform or any insignia which would usually be associated with the
6-8 position of constable nor may the constable use a county vehicle or
6-9 county equipment while delivering said notices. [~~For purposes of~~
6-10 ~~collecting fees for serving said notices, a constable is considered~~
6-11 ~~a private process server.~~]
6-12   SECTION 3. (a) Except as provided by Subsection (b) of
6-13 this section, Chapter 191, Civil Practice and Remedies Code, as
6-14 added by this Act, takes effect September 1, 2005.
6-15   (b) Sections 191.051 and 191.201, Civil Practice and
6-16 Remedies Code, as added by this Act, take effect March 1, 2006.
6-17   SECTION 4. Except as provided by Section 3 of this Act, this
6-18 Act takes effect September 1, 2005.

6-19   * * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

(SB) SCR SJR SR HB HCR HJR __165__

By___Wentworth___
(Author/Senate Sponsor)

___4-11-05___
(date)

We, your Committee on _____JURISPRUDENCE_____, to which was referred the attached measure,

have on_____4-6-05_____, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

(✓) do pass as substituted, and be printed
  (✓) the caption remained the same as original measure
  ( ) the caption changed with adoption of the substitute

( ) do pass as substituted, and be ordered not printed

( ) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested.   (✓) yes ( ) no

A revised fiscal note was requested.   (✓) yes ( ) no

An actuarial analysis was requested.   ( ) yes (✓) no

Considered by subcommittee.   ( ) yes (✓) no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Wentworth, Chair	✓			
Senator Gallegos, Vice-Chair		✓		
Senator Averitt	✓			
Senator Duncan	✓			
Senator Harris			✓	
Senator Hinojosa	✓			
Senator West	✓			
TOTAL VOTES	5	1	1	0

COMMITTEE ACTION

S260 Considered in public hearing
S270 Testimony taken

___Stephanie Hower___
COMMITTEE CLERK

___Jeff Wentworth___
CHAIR

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

BILL ANALYSIS

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In 1978, the Texas Supreme Court gave private process servers the authority to deliver and serve subpoenas. The court further extended the authority of the servers by giving them authority to deliver all citations under rule 103, Texas Rules of Civil Procedure. As a result, numerous private process serving companies have been established throughout Texas. There is no uniform requirement for background checks or liability insurance to protect the public against fraudulent servers. C.S.S.B. 165 establishes the regulation and licensing of private process servers through the Texas Commission of Licensing and Regulation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Civil Practice and Remedies Code by adding Title 8, as follows:

TITLE 8. CIVIL PRACTICES

CHAPTER 191. PRIVATE PROCESS SERVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. Defines "civil court," "civil process," "commission," "constable," "department," "executive director," "person," "private process server," "private process service business," "public servant,"and "sheriff."

Sec. 191.002. APPLICABILITY OF CHAPTER. Sets forth applicability of this chapter.

[Reserves Sections 191.003-191.050 for expansion]

SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a) Prohibits a person, except as provided by Section 191.002, from serving civil process in this state unless the person is licensed or registered under this chapter and serves the process through a private process service business.

> (b) Authorizes a person who is not a license holder and who is not exempt under Section 191.002 to serve outside this state a civil process issued by a civil court of this state if the person meets certain requirements.

> (c) Prohibits a person or business entity from representing that the person or business entity is a private process server or private process service business unless the person is licensed, or the business entity is registered, under this chapter.

Sec. 191.052. PRIVATE PROCESS SERVICE BUSINESS APPLICATION. Requires an applicant for registration as a private process service business to submit an application

on a form prescribed by the Texas Commission of Licensing and Regulation (commission). Sets forth terms of applicant eligibility to register under this section.

Sec. 191.053. LICENSE APPLICATION. (a) Requires an applicant for a process server license to submit an application on a form prescribed by the commission. Requires an applicant to meet certain criteria to be eligible for a license.

(b) Requires each license applicant to provide proof of seminar instruction, including at least eight hours of instruction on service of process and two hours of instruction on department regulation and rules, to the Texas Department of Licensing and Regulation (department).

Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Requires each applicant for a process server license under this chapter to disclose to the department any conviction of the applicant for a misdemeanor involving moral turpitude or a felony.

(b) Requires the department to conduct a thorough background investigation of each individual applicant on receipt of an original application. Requires the investigation to include certain aspects.

(c) Requires the department, on receipt of an application for renewal of a process server license, to conduct a background investigation of each individual applicant to determine whether the applicant is qualified under this chapter. Requires the investigation to include certain aspects.

(d) Provides that a background check under this section and the department's consideration of any criminal conviction is governed by certain laws.

(e) Provides that the conviction of an applicant of a crime does not automatically disqualify the applicant, require the revocation of a license or registration, or require the denial of an application for renewal of a license or registration.

(f) Requires an application for issuance or renewal of a license by a person who has pled guilty to a crime and been place on deferred adjudication in any jurisdiction to be considered on the basis of the criteria set forth in Subsections (d) and (e).

Sec. 191.055. ISSUANCE OF LICENSE AND REGISTRATIONS. (a) Requires the department to issue a process server license or an agent registration to an applicant who complies with the appropriate requirements of this chapter, passes the criminal history record check, as applicable, and pays all required fees.

(b) Requires the department to issue licenses or registrations not later than the 60th day after the date on which the application is received, except as provided by Subsection (c).

(c) Requires the department to notify the applicant of a delay in the event that the Department of Public Safety cannot complete the criminal history record check within 60 days.

Sec. 191.056. TERM OF LICENSE AND REGISTRATION; RENEWAL; RESPONSIBLE PARTY TERMINATION. (a) Provides timeline for license or business registration expiration.

(b) Requires the department to send a renewal application to each license holder and registered business not later than the 90th day before the date of expiration.

(c) Sets forth guidelines for the renewal of a license or registration.

(d) Requires a registered business to notify the department in writing not later than the 14th day after the date on which the employment of a registered agent by the license holder is terminated.

[Reserves Sections 191.057-191.100 for expansion]

SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) Authorizes a license holder to serve civil process issued by the courts of this state in the manner provided by law for service by sheriffs and constables anywhere in the state.

(b) Authorizes a license holder to determine the location of an individual for the purpose of serving civil process.

(c) Authorizes a license holder to serve all civil process, excepting certain writs and orders.

(d) Prohibits a license holder from serving a civil process in any action in which the license holder or the registered business that employs the license holder is an interested party.

(e) Prohibits an employee who is employed by an attorney or a law firm from serving a civil process, except a subpoena for a trial or for an oral deposition, relating to an action in which the employer is counsel to a party.

(f) Prohibits a license holder from having a firearm on the lcense holder's person when in the act of serving civil process, unless the license holder is also a peace officer or an honorably retired peace officer authorized to carry a firearm. Prohibits a weapon from being visible during the delivery of civil process.

(g) Prohibits a license holder from being assigned as the responsible party for more than one registered business in which the person does not have an ownership interest of more than 50 percent of the business.

Sec. 191.102. COSTS. Authorizes a fee charged and collected by a license holder or registered business for service of process to be charged as costs in a judicial proceeding. Prohibits fees charged by a license holder or registered business for service of process exceeding the service of process fees set by the commissioners court in a judicial proceeding unless otherwise approved by the judge presiding over the case.

Sec. 191.103. PUBLIC SERVANT. Requires an assault on a license holder during the delivery of civil process to be treated as an assault on a public servant. Provides that a county is not liable for the actions of a license holder unless the license holder is an employee of the county.

Sec. 191.104. IDENTIFICATION NUMBER. (a) Requires the department to issue a unique identification number to each license holder and registered business who are then required to provide that number with each return of service made by that person for the registered business that is filed with the clerk of the appropriate court.

(b) Requires the unique number of the private process server and the registered business on behalf of which the server is working to be provided to each person served. Requires a license holder to include the license holder's unique identification number on each valid process return and on each delivery copy of process served. Provides that failure to include the registered business's or person's unique identification number on each valid process return does not render the service of process invalid.

(c) Sets forth requirements for the issuance, content, and return of personal identification cards.

(d) Requires a license holder to produce the license holder's identification card to any person requesting it during the performance of service of process.

(e) Prohibits an identification card, badge, insignia, seal, patch, or other form of identification that could be construed to be that of a peace officer or employee of a county or state agency from being worn or displayed by a license holder.

Sec. 191.105. RETURN OF SERVICE OF PROCESS. Requires a registered business or license holder to return to the issuing court a sworn return of service verifying the truthfulness of the return for any process served in this state. Requires the return of service to be returned to the issuing court not later than the fifth business day after the date service is completed.

[Reserves Sections 191.106-191.150 for expansion]

SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. DISCIPLINARY ACTIONS. (a) Authorizes the commission to deny, suspend, or revoke a license or registration and to impose an administrative penalty under Subchapter F, Chapter 51 (Administrative Penalty), Occupations Code, on a finding that a license holder or registered agent has failed to meet certain requirements.

(b) Provides that proceedings for the denial, revocation, or suspension of a license or registration, for the imposition of an administrative penalty, and for an appeal from the proceeding are governed by Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, and Chapter 2001 (Administrative Procedure), Government Code.

Sec. 191.152. SUMMARY SUSPENSION. (a) Authorizes the department to summarily suspend a person's license upon receiving written notice from the Department of Public Safety or another law enforcement agency that a person licensed under this chapter has been arrested for or charged with an offense constituting a Class B misdemeanor or a greater offense.

(b) Requires the department to serve notice to the person and to any registered business that has assigned the person as a responsible party to initiate a proceeding under Subsection (a). Requires the notice to include certain information.

(c) Provides that the suspension is effective at the time the notice is served.

(d) Authorizes the individual, at the summary suspension hearing, to show cause why, pending final hearing on the suspension, the suspension should not continue.

(e) Authorizes a final hearing to be scheduled at a time after the final disposition of the charges that resulted in the summary suspension.

(f) Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to a proceeding under this section, except for the final administrative hearing.

(g) Provides that the dismissal of a complaint, information, or indictment, or an acquittal, releases the person from the automatic grounds for summary suspension under this section.

[Reserves Sections 191.153-191.200 for expansion]

SUBCHAPTER E. PENALTIES

Sec. 191.201. CRIMINAL PENALTIES. (a) Provides that a person commits an offense if the person practices as a process server and is not authorized to do so and that such an offense is a Class A misdemeanor.

(b) Provides that a person commits an offense if the person knowingly or intentionally falsifies a return of civil process or fails to produce the identification card to a person requesting it during the service of process and that such an offense is a Class A misdemeanor or, in certain situations, a state jail felony.

SECTION 2. Amends Section 154.005(d), Local Government Code, to delete existing text providing that a constable is considered a private process server for the purposes of collecting fees for serving certain notices.

SECTION 3. (a) Provides that, except as set forth in Subsection (b) of this section, Chapter 191, Civil Practice and Remedies Code, as added by this Act, takes effect September 1, 2005.

(b) Provides that Sections 191.051 and 191.201, Civil Practices and Remedies Code, as added by this Act, take effect March 1, 2006.

SECTION 4. Effective date: September 1, 2005, except as provided by SECTION 3 of this Act.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 8, 2005

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB165 by Wentworth (Relating to the regulation of private process servers; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB165, Committee Report 1st House, Substituted: an impact of $0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$0
2007	$0
2008	$0
2009	$0
2010	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from GENERAL REVENUE FUND 1	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	($254,740)	$254,740	2.5
2007	($244,390)	$244,390	2.5
2008	($244,390)	$244,390	2.5
2009	($244,390)	$244,390	2.5
2010	($244,390)	$244,390	2.5

Fiscal Analysis

The provisions of the bill amend the Civil Practices and Remedies Code to require a person to be licensed or registered to serve civil process in this state, and that a civil processor server business must be registered by the Texas Department of Licensing and Regulations (TDLR).

The executive director must issue process server licenses to applicants who comply with the requirements, pass a criminal history check; and pay the required fees. TDLR must conduct a background investigation of each applicant, to include processing of fingerprints through local, state, and federal law enforcement agencies, and examination of law enforcement records maintained by a local, state, or federal enforcement agency. The provisions require TDLR to issue a photo

identification card to a licensee, with the person's unique identification number on the card. The license or registration expires on the first anniversary of the date of issuance. Applicants for renewal must submit renewal application, renewal fee; and evidence of completion, prior to expiration of license and approved continuing education seminar consisting of at least six hours. It authorizes TDLR to deny, suspend or revoke a license or registration, and assess an administrative penalty.

Methodology

It is assumed that TDLR would set fees as necessary to offset the costs of implementing the provisions of the bill.

According to TDLR, the Texas Process Servers Associations estimates the population that would be regulated is approximately 760 business process servers licenses and about 3,000 process server licenses for a total of 3,760 licenses issued each fiscal year.

TDLR estimates that beginning in fiscal year 2006, a $5 per licensee/registrant cost that total $132,000 would be included in other costs to reflect anticipated charges by TexasOnline. This additional cost is included in the renewal fees, which would be take effect in fiscal year 2007, which total $136,400.

TDLR estimates the duties specified would require an Administrative Assistant III, a Legal Assistant II, and one half Accountant II. Salaries for fiscal years 2006 through 2010 would be $31,356 for one Administrative Assistant III, $33,312 for one Legal Assistant II, and $15,678 for one half an Accountant II plus $23,894 in benefit costs.

The Department of Public Safety's (DPS) criminal history check would cost $15 and the Federal Bureau of Investigation's criminal history check would cost $24. The bill would have a one-time increase of 3,400 fingerprint-based certified criminal history checks received by DPS' Crime Records Division. According to DPS, the bill would have no fiscal impact to the agency.

Technology

It is estimated the agency would need $5,750 in fiscal year 2006 for personal computers, printers, and supporting equipment.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation
LBB Staff: JOB, LB, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 15, 2005

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB165** by Wentworth (Relating to the regulation of private process servers; providing penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB165. As Introduced: a positive impact of $61.650 through the biennium ending August 31. 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$118,600
2007	($56,950)
2008	$92,600
2009	($45,470)
2010	$95,250

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	($249,400)	$368,000	2.0
2007	($107,250)	$50,300	2.0
2008	($141,150)	$233,750	2.0
2009	($105,670)	$60,200	2.0
2010	($137,250)	$232,500	2.0

Fiscal Year	Change in Number of State Employees from FY 2005
2006	
2007	
2008	
2009	
2010	

Fiscal Analysis

The bill would establish the regulation and licensing of private process servers through the Texas Department of Licensing and Regulation (TDLR) by adding Title 8 to the Civil Practice and Remedies Code.

The bill requires an applicant for an initial process server license to submit a sworn application on a form prescribed by TDLR and it also requires each applicant to disclose any conviction of the applicant for a misdemeanor involving moral turpitude or a felony. The bill would also require TDLR to issue a two-year process server license or an agent registration to an applicant who complies with the appropriate requirements explained in subchapter B, passes the criminal history record check, and pays all required fees. It would also require TDLR to send a renewal application to each license holder or registered agent not later than the 45th day before the date of expiration. The bill would provide a fee charged and collected by a license holder or registered agent for service of process may be charged as costs in a judicial proceeding. The bill would authorize TDLR to deny, suspend, or revoke a license or registration and to impose an administrative penalty under the Occupations Code, on a finding that a license holder or registered agent has failed to meet certain requirements.

The bill would take effect September 1, 2005.

Methodology

According to the Texas Department of Licensing and Regulation (TDLR), the Texas Process Servers Associations estimates the population that would be regulated to be approximately 900 process server licensees and 2,500 registered agents. According to the agency, biennial fees assessed by TDLR would be $55 for an original registration application, $55 for an original registration fee, $55 for a registration renewal, $80 for an original license application, $80 for an original license fee, and $80 for license renewal. Also, TDLR estimates that beginning in fiscal year 2006, a $10 per licensee/registrant cost would be included in other costs to reflect anticipated charges by TexasOnline. This additional cost is included in the renewal fees, which would be take effect in fiscal year 2007. Based on TDLR's analysis, it is assumed that a majority of the licensees would pay the two-year licensing fee beginning in fiscal year 2006 and that the remaining licensees would pay beginning in fiscal year 2007. TDLR estimates a General Revenue increase of $368,000 in fiscal year 2006 for 6,000 applicants, $50,300 in fiscal year 2007 for 800 applicants, $233,750 in fiscal year 2008 for 3,900 applicants, $60,200 in fiscal year 2009 for 990 applicants, and $232,500 in fiscal year 2010 for 3,800 applicants. Under current law, the agency is required to cover its operation costs with generated revenue. TDLR estimates to generate sufficient General Revenue funds in fiscal years 2006 and 2007 to cover the costs associated with the implementations of the bill for the 2006-07 biennium.

TDLR estimates the duties specified under the bill would require an Administrative Assistant III, a Legal Assistant II, and one half Accountant II. Salaries for fiscal years 2006 through 2010 would be $31,356 for one Administrative Assistant III, $33,312 for one Legal Assistant II, and $15,678 for one half an Accountant II.

The Department of Public Safety's (DPS) criminal history check would cost $15 and the Federal Bureau of Investigation's criminal history check would cost $24. The bill would have a one-time increase of 3,400 fingerprint-based certified criminal history checks received by DPS' Crime Records Division. According to DPS, the bill would have no fiscal impact to the agency.

Technology

According to TDLR, the technology fiscal impact is estimated to be $5,750 in fiscal year 2006 for personal computers, printers, and supporting equipment.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 452 Department of Licensing and Regulation

LBB Staff: JOB, LB, MW, RR

SB 165

SENATE COMMITTEE REPORT

Jurisprudence

March 16, 2005 - 1:30PM

> FOR: Harvey, Jay Lawyer (Texas Trial Lawyers Association), Austin, TX
> Hickman, Ron Constable (Self; JP & Constables Association), Spring, TX
> Weeks, Carl Vice President, Chairman Legislative Committee (Texas Process Servers Association), Austin, TX

> AGAINST: Hill, Robert C. Process Server/Investigator (Self), San Antonio, TX
> McCurry, W.F. Process Server (W.F. McCurry & Associates), Houston, TX
> McMichael, Dana L. Owner, Assured Civil Process Agency (Process Servers), Austin, TX
> Pendergrass, Tod E. President, DRLS, Inc. (Self), Austin, TX
> Thomas, Scott L. Owner (Thomas Process), Austin, TX

> ON: Hobbs, Lisa Rules Attorney (Supreme Court), Austin, TX
> Kuntz, William H. Executive Director (Texas Department of Licensing & Regulation), Austin, TX

Registering, but not testifying:

> For: Denner, Nick (Professional Civil Process), Spicewood, TX
> Freeman, Gary Constable, Harris County Precinct 2 (Self; Justice of the Peace & Constables Association), Galena Park, TX
> Hall, Charles Constable (JPCA), Midland, TX
> Harris, Charles Choc Constable (West Texas Justice of Peace & Constable, Justice of the Peace & Constable Association of Texas), Midland, TX
> Sisk, Cathy Division Chief, Harris County Attorney's Office (Harris County Attorney's Office), Houston, TX

March 23, 2005 - 1:30PM

> FOR: Hickman, Ron Constable (JPCA & Constables Legislative Committee), Spring, TX
> Keeney, Rick President (Professional Civil Process), Spicewood, TX
> Russell, Lee H. President TPSA (Texas Process Servers Association), Dallas, TX

> AGAINST: Adelstein, Larry Process Server (Self), Dallas, TX
> Duval, Morris Process Server (Self, Absolute Litigation Sup. Svc.), Irving, TX
> McCurry, W.F. Process Server (Self & Other Servers who couldn't attend), Houston, TX
> McMichael, Dana Owner-Assured Civil Process Agency (Process Serving Industry, Director: The Certified Civil Process Servers Association of Texas), Austin, TX
> Pendergrass, Tod E. President, DRLS, Inc. & Director of CCPSAT (Self & CCPSAT), Austin, TX

1

ON: Kuntz, Jr., William H. Executive Director (Texas Department of Licensing & Regulation), Austin, TX

Registering, but not testifying:
For: Campos, Jr., Charlie Constable (Ret.) (South Texas Justices of the Peace & Constables Association, Inc.), San Antonio, TX
           Cobos, David M. Justice of the Peace, Precinct 2 Midland County (Justices of the Peace & Constables Association of Texas), Midland, TX
           Elfant, Bruce Travis County Constable (Justices of the Peace and Constables Association), Austin, TX
           Hall, Charles Constable (Self), Midland, TX
           Harris, Charles Choc Constable, Precinct 2 (West TX J.P.C.A., Justice of the Peace & Constable of Texas), Midland, TX
           Watson, Andrew (T.P.S.A.), San Antonio, TX

On: Sisk, Cathy Division Chief (Harris County Attorney's Office), Houston, TX

2

By: WENTWORTH

Substitute the following for S.B. No. 165:

By: Newton

S.B. No. 165

C.S.S.B. No. 165

A BILL TO BE ENTITLED

1   AN ACT

2 relating to the regulation of private process servers; providing

3 penalties.

4   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5   SECTION 1.   The Civil Practice and Remedies Code is amended

6 by adding Title 8 to read as follows:

7   TITLE 8.   CIVIL PROCESS

8   CHAPTER 191. PRIVATE PROCESS SERVERS

9   SUBCHAPTER A.   GENERAL PROVISIONS

10   Sec. 191.001.   DEFINITIONS. In this chapter:

11   (1)   "Civil court" includes:

12   (A)   a civil district court;

13   (B)   a family district court;

14   (C)   a county court at law;

15   (D)   a probate court;

16   (E)   a justice court; and

17   (F)   a small claims court.

18   (2)   "Civil process" means all process issued or

19 sanctioned by a civil court.

20   (3)   "Commission" means the Texas Commission of

21 Licensing and Regulation.

22   (4)   "Constable" means a constable, deputy constable,

23 or reserve deputy constable.

24   (5)   "Department" means the Texas Department of

4-11-05 JC
4-19-05 1 Fl. Am.
JC

1   Licensing and Regulation.

2   (6) "Executive director" means the executive director

3   of the department.

4   (7) "Person" means an individual.

5   (8) "Private process server" means a person who, on

6   behalf of a private process service business, serves or offers to

7   serve civil process.

8   (9) "Private process service business" means a person

9   or business entity registered with the department as a business

10 that serves or offers to serve civil process.

11   (10) "Public servant" has the meaning assigned by

12 Section 1.07, Penal Code.

13   (11) "Sheriff" means a sheriff, deputy sheriff, or

14 reserve deputy sheriff.

15   Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter

16 does not apply to a sheriff or constable engaged in the discharge of

17 that person's official duties. A sheriff or constable who serves

18 civil process other than in the performance of official duties must

19 be licensed or registered under this chapter.

20   (b) This chapter does not apply to an investigator who is a

21 peace officer employed by a county or district attorney in this

22 state engaged in the discharge of that person's official duties or

23 in the delivery of nonjudicial notices. An investigator described 2/3

24 by this subsection who serves civil process other than in the

25 performance of official duties must be licensed or registered under

26 this chapter.

27   (c) This chapter does not limit or restrict the service of

1 process in this state as provided by a court order in a specific

2 civil case in which the presiding magistrate or judge has

3 determined the credibility of the person designated to serve the

4 process. A court may not issue a blanket or standing order

5 authorizing service of process.

6   (d) This chapter does not apply to a court reporter

7 certified under Chapter 52, Government Code.

8   [Sections 191.003-191.050 reserved for expansion]

9   SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

10   Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a)

11 Except as provided by Section 191.002, a person may not serve civil

12 process in this state unless the person is licensed under this

13 chapter and serves the process through a private process service

14 business.

15   (b) A person who is not a license holder and who is not

16 exempt under Section 191.002 may serve outside this state a civil

17 process issued by a civil court of this state if the person:

18   (1) is authorized by law, rule, or court order in the

19 person's jurisdiction to serve process;

20   (2) is a disinterested person competent to make an

21 oath of that fact; and

22   (3) has the return of service acknowledged by an

23 officer authorized to administer oaths in the jurisdiction in which

24 the civil process was served.

25   (c) A person or business entity may not represent that the

26 person or business entity is a private process server or private

27 process service business unless the person is licensed, or the

1 business entity is registered, under this chapter.

2 Sec. 191.052. PRIVATE PROCESS SERVICE BUSINESS

3 APPLICATION. An applicant for registration as a private process

4 service business must submit an application on a form prescribed by

5 the commission. To be eligible to register under this section, the

6 applicant must:

7 (1) submit the nonrefundable application fee; and

8 (2) have a person licensed under this chapter assigned

9 as the responsible party for the business.

10 Sec. 191.053. LICENSE APPLICATION. (a) An applicant for a

11 process server license under this chapter must submit an

12 application on a form prescribed by the commission. To be eligible

13 for a license under this section, an applicant must:

14 (1) be at least 18 years of age;

15 (2) demonstrate the applicant's honesty,

16 trustworthiness, and integrity;

17 (3) submit the nonrefundable application fee; and

18 (4) comply with the requirements adopted under

19 Subsection (b).

20 (b) Each license applicant must provide proof to the

21 department in a manner acceptable to the department of completion

22 of a department-approved 10-hour course on civil process and

23 regulation and rules consisting of at least eight hours of ⁴⁄₅

24 instruction on service of process and two hours of instruction on

25 department regulation and rules.

26 Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Each

27 applicant for a process server license under this chapter shall

1   disclose to the department in the manner prescribed by the

2   commission any conviction of the applicant for a misdemeanor

3   involving moral turpitude or a felony.

4   (b) On receipt of an original application for issuance of a

5   process server license, the department shall conduct a thorough

6   background investigation of each individual applicant to determine

7   whether the applicant is qualified under this chapter. The

8   investigation must include:

9   (1) the submission of fingerprints by the applicant

10   for processing through appropriate local, state, and federal law

11   enforcement agencies; and

12   (2) the examination by the department of law

13   enforcement records maintained by a local, state, or federal law

14   enforcement agency.

15   (c) On receipt of an application for renewal of a process

16   server license, the department shall conduct a background

17   investigation of each individual applicant to determine whether the

18   applicant is qualified under this chapter. The investigation must

19   include examination by the department of law enforcement records

20   maintained by a local, state, or federal law enforcement agency.

21   (d) A background check under this section and the

22   department's consideration of any criminal conviction is governed

23   by: 5/6

24   (1) this chapter;

25   (2) Sections 411.093 and 411.122, Government Code; and

26   (3) Chapter 53, Occupations Code.

27   (e) The conviction of an applicant of a crime does not

1   automatically:

2   (1) disqualify the applicant;

3   (2) require revocation of a license or registration;

4   or

5   (3) require denial of an application for renewal of a

6   license or registration.

7   (f) An application for issuance or renewal of a license by a

8   person who has pled guilty to a crime and been placed on deferred

9   adjudication in any jurisdiction shall be considered on the basis

10   of the criteria set forth in Subsections (d) and (e).

11   Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS. (a)

12   The department shall issue a business registration or process

13   server license to an applicant who complies with the appropriate

14   requirements of this chapter, passes the criminal history record

15   check, as applicable, and pays all required fees.

16   (b) Except as provided by Subsection (c), the department

17   shall issue the license or registration not later than the 60th day

18   after the date on which the application is received by the

19   department.

20   (c) If the department is notified by the Department of

21   Public Safety that a criminal history record check affecting an

22   applicant will not be completed within the 60 days prescribed by

23   Subsection (b), the department shall notify the applicant of the

24   delay.

25   Sec. 191.056. TERM OF LICENSE AND REGISTRATION; RENEWAL;

26   RESPONSIBLE PARTY TERMINATION. (a) A license or business

27   registration issued under this chapter expires on the first

1 anniversary of the date of issuance.

2   (b) The department shall send a renewal notice to each

3 license holder and registered business not later than the 90th day

4 before the date of expiration of the license or registration.

5   (c) A license holder or registered business may renew the

6 license or registration by submitting to the department before the

7 expiration date, on a form prescribed by the commission, a renewal

8 application accompanied by the renewal fee. To renew a license, the

9 license holder must also present evidence satisfactory to the

10 department of completion, before the expiration of the license, of

11 a department-approved continuing education seminar consisting of

12 at least four hours of instruction in civil process and two hours of

13 instruction in department rules.

14   (d) A registered business shall notify the department in

15 writing not later than the 14th day after the date on which the

16 employment of a private process server designated as a responsible

17 party is terminated.

18   [Sections 191.057-191.100 reserved for expansion]

19   SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

20   Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) A

21 license holder may serve civil process issued by the courts of this

22 state in the manner provided by law for service by sheriffs and

23 constables. The person may serve the process anywhere in this

24 state.

25   (b) A license holder may determine the location of an

26 individual for the purpose of serving civil process.

27   (c) A license holder may serve all civil process, except for

1 a writ of attachment, writ of sequestration, distress warrant, writ

2 of forcible entry and detainer, temporary ex parte protective

3 order, protective order, writ of habeas corpus, writ of mandamus,

4 trial of right of property, turnover order, or writ of certiorari.

5 (d) A license holder may not serve a civil process in any

6 action in which the license holder or the registered business that

7 employs the license holder is an interested party.

8 (e) An employee of an attorney or a law firm may not serve a

9 civil process, except a subpoena for a trial or for an oral

10 deposition, relating to an action in which the employing attorney

11 or law firm is counsel to a party.

12 (f) A license holder may not have a firearm on the license

13 holder's person when in the act of serving civil process, unless the

14 license holder is also a peace officer or an honorably retired peace

15 officer authorized to carry a firearm. A weapon may not be visible

16 during the delivery of civil process.

17 (g) A license holder may not be assigned as the responsible

18 party for more than one registered business in which the person does

19 not have an ownership interest of more than 50 percent of the

20 business.

21 Sec. 191.102. COSTS. A fee charged and collected by a

22 license holder or registered business for service of process may be

23 charged as costs in a judicial proceeding. Fees charged by a

24 license holder or registered business for service of process

25 exceeding the service of process fees set by the commissioners

26 court in the county in which the case is pending, may not be charged

27 as costs in a judicial proceeding unless otherwise approved by the

1 judge presiding over the case.

2 Sec. 191.103. PUBLIC SERVANT. An assault on a license

3 holder during the delivery of civil process shall be treated as an

4 assault on a public servant. A county is not liable for the actions

5 of a license holder unless the license holder is an employee of the

6 county.

7 Sec. 191.104. IDENTIFICATION NUMBER. (a) The department

8 shall issue to each license holder and registered business a unique

9 identification number. The license holder and registered business

10 shall provide that unique number with each return of service made by

11 that person for the registered business that is filed with the clerk

12 of the appropriate court.

13 (b) The unique number of the private process server and the

14 registered business on behalf of which the server is working must be

15 provided to each person served. A license holder shall include the

16 license holder's unique identification number on each valid process

17 return and on each delivery copy of process served. Failure to

18 include the registered business's or person's unique identification

19 number on each valid process return does not render the service of

20 process invalid.

21 (c) The department shall issue to each license holder a

22 photo identification card with the person's unique identification

23 number on the card. The department shall determine the size, $^{9}/_{10}$

24 design, and content of the identification card. The card remains

25 the property of the state and must be returned on demand by the

26 department.

27 (d) A license holder shall produce the license holder's

identification card to any person requesting it during the performance of service of process.

(e) An identification card, badge, insignia, seal, patch, or other form of identification that may be construed to be that of a peace officer or employee of a county or state agency may not be worn or displayed by a license holder.

Sec. 191.105. RETURN OF SERVICE OF PROCESS. A registered business or license holder shall return to the issuing court a sworn return of service verifying the truthfulness of the return for any process served in this state. The return of service must be returned to the issuing court not later than the fifth business day after the date service is completed.

[Sections 191.106-191.150 reserved for expansion]

SUBCHAPTER D. DEPARTMENT ENFORCEMENT

Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission may deny, suspend, or revoke a license or registration, as appropriate, and the commission may impose an administrative penalty under Subchapter F, Chapter 51, Occupations Code, on a finding that:

(1) a registered business has:

(A) refused to permit an examination by the department of the records required to be maintained by a registered business under rules adopted under this chapter; or $^{10}/_{11}$

(B) allowed a person to serve process on the registered business's behalf while knowing that the person is not legally authorized to do so; or

(2) a license holder has:

1   (A) violated this chapter, a rule adopted under

2   this chapter, or an order of the executive director or commission;

3   (B) knowingly made a false or fraudulent return

4   of service; or

5   (C) been convicted of a misdemeanor that directly

6   relates to the duties and responsibilities involved in performing

7   the duties of a process server or of any felony.

8   (b) Proceedings for the denial, revocation, or suspension

9   of a license or registration, for the imposition of an

10   administrative penalty, and for an appeal from the proceeding are

11   governed by Chapter 51, Occupations Code, and Chapter 2001,

12   Government Code.

13   Sec. 191.152. SUMMARY SUSPENSION. (a) On receiving

14   written notice from the Department of Public Safety of the State of Texas or another law

15   enforcement agency that a person licensed under this chapter has

16   been arrested for or charged with an offense constituting a Class B

17   misdemeanor or a greater offense, the department may summarily

18   suspend the person's license.

19   (b) To initiate a proceeding under Subsection (a), the

20   department must serve notice to the person and to any registered

21   business that has assigned the person as a responsible party. The

22   notice must:

23   (1) inform the person of the right to a hearing on the 11/12

24   summary suspension;

25   (2) state the alleged violations that constitute the

26   grounds for the summary suspension;

27   (3) indicate the date and place of the hearing on the

1 summary suspension, which must be not earlier than the fifth day and

2 not later than the 14th day after the date notice is issued;

3   (4) be personally served on the person or mailed to the

4 person by certified or registered mail, return receipt requested,

5 to the individual's mailing address as it appears on department

6 records; and

7   (5) be sent by registered or certified mail, return

8 receipt requested, to any registered business required to be

9 notified.

10   (c) The suspension is effective at the time the notice is

11 served.

12   (d) At the summary suspension hearing, the individual may

13 show cause why, pending final hearing on the suspension, the

14 suspension should not continue.

15   (e) A final hearing may be scheduled at a time after the

16 final disposition of the charges that resulted in the summary

17 suspension.

18   (f) Chapter 2001, Government Code, does not apply to a

19 proceeding under this section, except for the final administrative

20 hearing.

21   (g) The dismissal of a complaint, information, or

22 indictment, or an acquittal, releases the person from the automatic

23 grounds for summary suspension under this section. 12/13

24   [Sections 191.153-191.200 reserved for expansion]

25   SUBCHAPTER E. PENALTIES

26 Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an

27 offense if the person practices as a private process server and is

1   not authorized to do so under this chapter. An offense under this

2   subsection is a Class A misdemeanor.

3   (b) A person commits an offense if the person knowingly or

4   intentionally falsifies a return of civil process or fails to

5   produce the identification card to a person requesting it during

6   the service of process. An offense under this subsection is a Class

7   A misdemeanor unless the person's intent is to defraud or harm

8   another, in which event the offense is a state jail felony.

9   SECTION 2. ∧Section 154.005~~(d)~~ _Subsection (d),_ , Local Government Code, is

10   amended to read as follows:

11   (d) A constable may receive, in addition to Subsection (c),

12   all fees, commissions, or payments for delivering notices required

13   by Section 24.005, Property Code, relating to eviction actions.

14   Notices may only be delivered when not in conflict with the official

15   duties and responsibilities of the constable. A constable

16   delivering said notices must not be wearing upon his or her person a

17   uniform or any insignia which would usually be associated with the

18   position of constable nor may the constable use a county vehicle or

19   county equipment while delivering said notices. [~~For purposes of~~

20   ~~collecting fees for serving said notices, a constable is considered~~

21   ~~a private process server.~~]

22   SECTION 3. (a) Except as provided by Subsection (b) of this

23   section, Chapter 191, Civil Practice and Remedies Code, as/added by

24   this Act, takes effect September 1, 2005.

25   (b) Sections 191.051 and 191.201, Civil Practice and

26   Remedies Code, as added by this Act, take effect March 1, 2006.

27   SECTION 4. Except as provided by Section 3 of this Act, this

ADOPTED

APR 1 8 2005

Secretary of the Senate

FLOOR AMENDMENT NO.____   BY: _Wentworth_

1   Amend C.S.S.B. No. 165 as follows:

2   (1) In Section 1 of the bill, in added Section 191.001(2),

3   Civil Practice and Remedies Code (senate committee report, page 1,

4   line 27), after the period, insert "The term does not include

5   service of any writ that requires the actual taking of possession of

6   a person, property, or thing or an enforcement action required of or

7   directed to a peace officer related to the taking of possession of a

8   person, property, or thing."

9   (2) In Section 1 of the bill, strike added Section

10   191.051(b)(3), Civil Practice and Remedies Code (senate committee

11   report, page 2, lines 18 through 20), and substitute the following:

12   (3) returns to the issuing court, not later than the

13   10th business day after the date service is completed, a sworn

14   return of service verifying the truthfulness of the return.

Fl Am. #1 4-19-05

By: Wentworth   S.B. No. 165

A BILL TO BE ENTITLED

1   AN ACT

2   relating to the regulation of private process servers; providing

3   penalties.

4   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5   SECTION 1. The Civil Practice and Remedies Code is amended

6   by adding Title 8 to read as follows:

7   TITLE 8. CIVIL PROCESS

8   CHAPTER 191. PRIVATE PROCESS SERVERS

9   SUBCHAPTER A. GENERAL PROVISIONS

10   Sec. 191.001. DEFINITIONS. In this chapter:

11   (1) "Civil court" includes:

12   (A) a civil district court;

13   (B) a family district court;

14   (C) a county court at law;

15   (D) a probate court;

16   (E) a justice court; and

17   (F) a small claims court.

18   (2) "Civil process" means all process issued or

19   sanctioned by a civil court. The term does not include service of

20   any writ that requires the actual taking of possession of a person,

21   property, or thing or an enforcement action required of or directed

22   to a peace officer related to the taking of possession of a person,

23   property, or thing.

24   (3) "Commission" means the Texas Commission of

1

1 Licensing and Regulation.

2   (4) "Constable" means a constable, deputy constable,

3 or reserve deputy constable.

4   (5) "Department" means the Texas Department of

5 Licensing and Regulation.

6   (6) "Executive director" means the executive director

7 of the department.

8   (7) "Person" means an individual.

9   (8) "Private process server" means a person who, on

10 behalf of a private process service business, serves or offers to

11 serve civil process.

12   (9) "Private process service business" means a person

13 or business entity registered with the department as a business

14 that serves or offers to serve civil process.

15   (10) "Public servant" has the meaning assigned by

16 Section 1.07, Penal Code.

17   (11) "Sheriff" means a sheriff, deputy sheriff, or

18 reserve deputy sheriff.

19   Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter

20 does not apply to a sheriff or constable engaged in the discharge of

21 that person's official duties. A sheriff or constable who serves

22 civil process other than in the performance of official duties must

23 be licensed or registered under this chapter.

24   (b) This chapter does not apply to an investigator who is a

25 peace officer employed by a county or district attorney in this

26 state engaged in the discharge of that person's official duties or

27 in the delivery of nonjudicial notices. An investigator described

1 by this subsection who serves civil process other than in the

2 performance of official duties must be licensed or registered under

3 this chapter.

4 (c) This chapter does not limit or restrict the service of

5 process in this state as provided by a court order in a specific

6 civil case in which the presiding magistrate or judge has

7 determined the credibility of the person designated to serve the

8 process. A court may not issue a blanket or standing order

9 authorizing service of process.

10 (d) This chapter does not apply to a court reporter

11 certified under Chapter 52, Government Code.

12 [Sections 191.003-191.050 reserved for expansion]

13 SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

14 Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a)

15 Except as provided by Section 191.002, a person may not serve civil

16 process in this state unless the person is licensed under this

17 chapter and serves the process through a private process service

18 business.

19 (b) A person who is not a license holder and who is not

20 exempt under Section 191.002 may serve outside this state a civil

21 process issued by a civil court of this state if the person:

22 (1) is authorized by law, rule, or court order in the

23 person's jurisdiction to serve process;

24 (2) is a disinterested person competent to make an

25 oath of that fact; and

26 (3) returns to the issuing court, not later than the

27 10th business day after the date service is completed, a sworn

1   return of service verifying the truthfulness of the return.

2   (c)   A person or business entity may not represent that the

3   person or business entity is a private process server or private

4   process service business unless the person is licensed, or the

5   business entity is registered, under this chapter.

6   Sec. 191.052.   PRIVATE   PROCESS   SERVICE   BUSINESS

7   APPLICATION.   An applicant for registration as a private process

8   service business must submit an application on a form prescribed by

9   the commission.   To be eligible to register under this section, the

10   applicant must:

11   (1)   submit the nonrefundable application fee; and

12   (2)   have a person licensed under this chapter assigned

13   as the responsible party for the business.

14   Sec. 191.053.   LICENSE APPLICATION.   (a)   An applicant for a

15   process   server   license   under   this   chapter   must   submit   an

16   application on a form prescribed by the commission.   To be eligible

17   for a license under this section, an applicant must:

18   (1)   be at least 18 years of age;

19   (2)   demonstrate   the   applicant's   honesty,

20   trustworthiness, and integrity;

21   (3)   submit the nonrefundable application fee; and

22   (4)   comply   with   the   requirements   adopted   under

23   Subsection (b).

24   (b)   Each license applicant must provide proof to the

25   department in a manner acceptable to the department of completion

26   of a department-approved 10-hour course on civil process and

27   regulation and rules consisting of at least eight hours of

1 instruction on service of process and two hours of instruction on

2 department regulation and rules.

3   Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Each

4 applicant for a process server license under this chapter shall

5 disclose to the department in the manner prescribed by the

6 commission any conviction of the applicant for a misdemeanor

7 involving moral turpitude or a felony.

8   (b) On receipt of an original application for issuance of a

9 process server license, the department shall conduct a thorough

10 background investigation of each individual applicant to determine

11 whether the applicant is qualified under this chapter. The

12 investigation must include:

13   (1) the submission of fingerprints by the applicant

14 for processing through appropriate local, state, and federal law

15 enforcement agencies; and

16   (2) the examination by the department of law

17 enforcement records maintained by a local, state, or federal law

18 enforcement agency.

19   (c) On receipt of an application for renewal of a process

20 server license, the department shall conduct a background

21 investigation of each individual applicant to determine whether the

22 applicant is qualified under this chapter. The investigation must

23 include examination by the department of law enforcement records

24 maintained by a local, state, or federal law enforcement agency.

25   (d) A background check under this section and the

26 department's consideration of any criminal conviction is governed

27 by:

1   (1) this chapter;

2   (2) Sections 411.093 and 411.122, Government Code; and

3   (3) Chapter 53, Occupations Code.

4   (e) The conviction of an applicant of a crime does not

5   automatically:

6   (1) disqualify the applicant;

7   (2) require revocation of a license or registration;

8   or

9   (3) require denial of an application for renewal of a

10   license or registration.

11   (f) An application for issuance or renewal of a license by a

12   person who has pled guilty to a crime and been placed on deferred

13   adjudication in any jurisdiction shall be considered on the basis

14   of the criteria set forth in Subsections (d) and (e).

15   Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS.

16   (a) The department shall issue a business registration or process

17   server license to an applicant who complies with the appropriate

18   requirements of this chapter, passes the criminal history record

19   check, as applicable, and pays all required fees.

20   (b) Except as provided by Subsection (c), the department

21   shall issue the license or registration not later than the 60th day

22   after the date on which the application is received by the

23   department.

24   (c) If the department is notified by the Department of

25   Public Safety that a criminal history record check affecting an

26   applicant will not be completed within the 60 days prescribed by

27   Subsection (b), the department shall notify the applicant of the

6

1 delay.

2   Sec. 191.056. TERM OF LICENSE AND REGISTRATION; RENEWAL;

3 RESPONSIBLE PARTY TERMINATION.   (a) A license or business

4 registration issued under this chapter expires on the first

5 anniversary of the date of issuance.

6   (b) The department shall send a renewal notice to each

7 license holder and registered business not later than the 90th day

8 before the date of expiration of the license or registration.

9   (c) A license holder or registered business may renew the

10 license or registration by submitting to the department before the

11 expiration date, on a form prescribed by the commission, a renewal

12 application accompanied by the renewal fee. To renew a license, the

13 license holder must also present evidence satisfactory to the

14 department of completion, before the expiration of the license, of

15 a department-approved continuing education seminar consisting of

16 at least four hours of instruction in civil process and two hours of

17 instruction in department rules.

18   (d) A registered business shall notify the department in

19 writing not later than the 14th day after the date on which the

20 employment of a private process server designated as a responsible

21 party is terminated.

22   [Sections 191.057-191.100 reserved for expansion]

23   SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

24   Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) A

25 license holder may serve civil process issued by the courts of this

26 state in the manner provided by law for service by sheriffs and

27 constables. The person may serve the process anywhere in this

1   state.

2   (b) A license holder may determine the location of an

3   individual for the purpose of serving civil process.

4   (c) A license holder may serve all civil process, except for

5   a writ of attachment, writ of sequestration, distress warrant, writ

6   of forcible entry and detainer, temporary ex parte protective

7   order, protective order, writ of habeas corpus, writ of mandamus,

8   trial of right of property, turnover order, or writ of certiorari.

9   (d) A license holder may not serve a civil process in any

10   action in which the license holder or the registered business that

11   employs the license holder is an interested party.

12   (e) An employee of an attorney or a law firm may not serve a

13   civil process, except a subpoena for a trial or for an oral

14   deposition, relating to an action in which the employing attorney

15   or law firm is counsel to a party.

16   (f) A license holder may not have a firearm on the license

17   holder's person when in the act of serving civil process, unless the

18   license holder is also a peace officer or an honorably retired peace

19   officer authorized to carry a firearm. A weapon may not be visible

20   during the delivery of civil process.

21   (g) A license holder may not be assigned as the responsible

22   party for more than one registered business in which the person does

23   not have an ownership interest of more than 50 percent of the

24   business.

25   Sec. 191.102. COSTS. A fee charged and collected by a

26   license holder or registered business for service of process may be

27   charged as costs in a judicial proceeding. Fees charged by a

1 license holder or registered business for service of process

2 exceeding the service of process fees set by the commissioners

3 court in the county in which the case is pending, may not be charged

4 as costs in a judicial proceeding unless otherwise approved by the

5 judge presiding over the case.

6   Sec. 191.103. PUBLIC SERVANT. An assault on a license

7 holder during the delivery of civil process shall be treated as an

8 assault on a public servant. A county is not liable for the actions

9 of a license holder unless the license holder is an employee of the

10 county.

11   Sec. 191.104. IDENTIFICATION NUMBER. (a) The department

12 shall issue to each license holder and registered business a unique

13 identification number. The license holder and registered business

14 shall provide that unique number with each return of service made by

15 that person for the registered business that is filed with the clerk

16 of the appropriate court.

17   (b) The unique number of the private process server and the

18 registered business on behalf of which the server is working must be

19 provided to each person served. A license holder shall include the

20 license holder's unique identification number on each valid process

21 return and on each delivery copy of process served. Failure to

22 include the registered business's or person's unique identification

23 number on each valid process return does not render the service of

24 process invalid.

25   (c) The department shall issue to each license holder a

26 photo identification card with the person's unique identification

27 number on the card. The department shall determine the size,

1 design, and content of the identification card. The card remains

2 the property of the state and must be returned on demand by the

3 department.

4   (d) A license holder shall produce the license holder's

5 identification card to any person requesting it during the

6 performance of service of process.

7   (e) An identification card, badge, insignia, seal, patch,

8 or other form of identification that may be construed to be that of

9 a peace officer or employee of a county or state agency may not be

10 worn or displayed by a license holder.

11   Sec. 191.105. RETURN OF SERVICE OF PROCESS. A registered

12 business or license holder shall return to the issuing court a sworn

13 return of service verifying the truthfulness of the return for any

14 process served in this state. The return of service must be

15 returned to the issuing court not later than the fifth business day

16 after the date service is completed.

17   [Sections 191.106-191.150 reserved for expansion]

18   SUBCHAPTER D. DEPARTMENT ENFORCEMENT

19   Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission

20 may deny, suspend, or revoke a license or registration, as

21 appropriate, and the commission may impose an administrative

22 penalty under Subchapter F, Chapter 51, Occupations Code, on a

23 finding that:

24   (1) a registered business has:

25   (A) refused to permit an examination by the

26 department of the records required to be maintained by a registered

27 business under rules adopted under this chapter; or

1   (B) allowed a person to serve process on the

2 registered business's behalf while knowing that the person is not

3 legally authorized to do so; or

4   (2) a license holder has:

5   (A) violated this chapter, a rule adopted under

6 this chapter, or an order of the executive director or commission;

7   (B) knowingly made a false or fraudulent return

8 of service; or

9   (C) been convicted of a misdemeanor that directly

10 relates to the duties and responsibilities involved in performing

11 the duties of a process server or of any felony.

12   (b) Proceedings for the denial, revocation, or suspension

13 of a license or registration, for the imposition of an

14 administrative penalty, and for an appeal from the proceeding are

15 governed by Chapter 51, Occupations Code, and Chapter 2001,

16 Government Code.

17   Sec. 191.152. SUMMARY SUSPENSION. (a) On receiving

18 written notice from the Department of Public Safety of the State of

19 Texas or another law enforcement agency that a person licensed

20 under this chapter has been arrested for or charged with an offense

21 constituting a Class B misdemeanor or a greater offense, the

22 department may summarily suspend the person's license.

23   (b) To initiate a proceeding under Subsection (a), the

24 department must serve notice to the person and to any registered

25 business that has assigned the person as a responsible party. The

26 notice must:

27   (1) inform the person of the right to a hearing on the

1 summary suspension;

2   (2) state the alleged violations that constitute the

3 grounds for the summary suspension;

4   (3) indicate the date and place of the hearing on the

5 summary suspension, which must be not earlier than the fifth day and

6 not later than the 14th day after the date notice is issued;

7   (4) be personally served on the person or mailed to the

8 person by certified or registered mail, return receipt requested,

9 to the individual's mailing address as it appears on department

10 records; and

11   (5) be sent by registered or certified mail, return

12 receipt requested, to any registered business required to be

13 notified.

14   (c) The suspension is effective at the time the notice is

15 served.

16   (d) At the summary suspension hearing, the individual may

17 show cause why, pending final hearing on the suspension, the

18 suspension should not continue.

19   (e) A final hearing may be scheduled at a time after the

20 final disposition of the charges that resulted in the summary

21 suspension.

22   (f) Chapter 2001, Government Code, does not apply to a

23 proceeding under this section, except for the final administrative

24 hearing.

25   (g) The dismissal of a complaint, information, or

26 indictment, or an acquittal, releases the person from the automatic

27 grounds for summary suspension under this section.

1   [Sections 191.153-191.200 reserved for expansion]

2   SUBCHAPTER E. PENALTIES

3   Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an

4   offense if the person practices as a private process server and is

5   not authorized to do so under this chapter. An offense under this

6   subsection is a Class A misdemeanor.

7   (b) A person commits an offense if the person knowingly or

8   intentionally falsifies a return of civil process or fails to

9   produce the identification card to a person requesting it during

10   the service of process. An offense under this subsection is a Class

11   A misdemeanor unless the person's intent is to defraud or harm

12   another, in which event the offense is a state jail felony.

13   SECTION 2. Subsection (d), Section   154.005, Local

14   Government Code, is amended to read as follows:

15   (d) A constable may receive, in addition to Subsection (c),

16   all fees, commissions, or payments for delivering notices required

17   by Section 24.005, Property Code, relating to eviction actions.

18   Notices may only be delivered when not in conflict with the official

19   duties and responsibilities of the constable. A constable

20   delivering said notices must not be wearing upon his or her person a

21   uniform or any insignia which would usually be associated with the

22   position of constable nor may the constable use a county vehicle or

23   county equipment while delivering said notices. [For purposes of

24   collecting fees for serving said notices, a constable is considered

25   a private process server.]

26   SECTION 3. (a) Except as provided by Subsection (b) of

27   this section, Chapter 191, Civil Practice and Remedies Code, as

1   added by this Act, takes effect September 1, 2005.

2   (b)   Sections 191.051 and 191.201, Civil Practice and

3   Remedies Code, as added by this Act, take effect March 1, 2006.

4   SECTION 4.   Except as provided by Section 3 of this Act, this

5   Act takes effect September 1, 2005.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 8, 2005

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB165** by Wentworth (Relating to the regulation of private process servers; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB165, Committee Report 1st House, Substituted: an impact of $0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$0
2007	$0
2008	$0
2009	$0
2010	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1	Change in Number of State Employees from FY 2005
2006	($254,740)	$254,740	2.5
2007	($244,390)	$244,390	2.5
2008	($244,390)	$244,390	2.5
2009	($244,390)	$244,390	2.5
2010	($244,390)	$244,390	2.5

Fiscal Analysis

The provisions of the bill amend the Civil Practices and Remedies Code to require a person to be licensed or registered to serve civil process in this state, and that a civil processor server business must be registered by the Texas Department of Licensing and Regulations (TDLR).

The executive director must issue process server licenses to applicants who comply with the requirements, pass a criminal history check; and pay the required fees. TDLR must conduct a background investigation of each applicant, to include processing of fingerprints through local, state, and federal law enforcement agencies, and examination of law enforcement records maintained by a local, state, or federal enforcement agency. The provisions require TDLR to issue a photo

identification card to a licensee, with the person's unique identification number on the card. The license or registration expires on the first anniversary of the date of issuance. Applicants for renewal must submit renewal application, renewal fee; and evidence of completion, prior to expiration of license and approved continuing education seminar consisting of at least six hours. It authorizes TDLR to deny, suspend or revoke a license or registration, and assess an administrative penalty.

Methodology

It is assumed that TDLR would set fees as necessary to offset the costs of implementing the provisions of the bill.

According to TDLR, the Texas Process Servers Associations estimates the population that would be regulated is approximately 760 business process servers licenses and about 3,000 process server licenses for a total of 3,760 licenses issued each fiscal year.

TDLR estimates that beginning in fiscal year 2006, a $5 per licensee/registrant cost that total $132,000 would be included in other costs to reflect anticipated charges by TexasOnline. This additional cost is included in the renewal fees, which would be take effect in fiscal year 2007, which total $136,400.

TDLR estimates the duties specified would require an Administrative Assistant III, a Legal Assistant II, and one half Accountant II. Salaries for fiscal years 2006 through 2010 would be $31,356 for one Administrative Assistant III, $33,312 for one Legal Assistant II, and $15,678 for one half an Accountant II plus $23,894 in benefit costs.

The Department of Public Safety's (DPS) criminal history check would cost $15 and the Federal Bureau of Investigation's criminal history check would cost $24. The bill would have a one-time increase of 3,400 fingerprint-based certified criminal history checks received by DPS' Crime Records Division. According to DPS, the bill would have no fiscal impact to the agency.

Technology

It is estimated the agency would need $5,750 in fiscal year 2006 for personal computers, printers, and supporting equipment.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation
LBB Staff: JOB, LB, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 15, 2005

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB165** by Wentworth (Relating to the regulation of private process servers; providing penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB165, As Introduced: a positive impact of S61,650 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$118,600
2007	($56,950)
2008	$92,600
2009	($45,470)
2010	$95,250

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	($249,400)	$368,000	2.0
2007	($107,250)	$50,300	2.0
2008	($141,150)	$233,750	2.0
2009	($105,670)	$60,200	2.0
2010	($137,250)	$232,500	2.0

Fiscal Year	Change in Number of State Employees from FY 2005
2006	
2007	
2008	
2009	
2010	

Fiscal Analysis

The bill would establish the regulation and licensing of private process servers through the Texas Department of Licensing and Regulation (TDLR) by adding Title 8 to the Civil Practice and Remedies Code.

The bill requires an applicant for an initial process server license to submit a sworn application on a form prescribed by TDLR and it also requires each applicant to disclose any conviction of the applicant for a misdemeanor involving moral turpitude or a felony. The bill would also require TDLR to issue a two-year process server license or an agent registration to an applicant who complies with the appropriate requirements explained in subchapter B, passes the criminal history record check, and pays all required fees. It would also require TDLR to send a renewal application to each license holder or registered agent not later than the 45th day before the date of expiration. The bill would provide a fee charged and collected by a license holder or registered agent for service of process may be charged as costs in a judicial proceeding. The bill would authorize TDLR to deny, suspend, or revoke a license or registration and to impose an administrative penalty under the Occupations Code, on a finding that a license holder or registered agent has failed to meet certain requirements.

The bill would take effect September 1, 2005.

Methodology

According to the Texas Department of Licensing and Regulation (TDLR), the Texas Process Servers Associations estimates the population that would be regulated to be approximately 900 process server licensees and 2,500 registered agents. According to the agency, biennial fees assessed by TDLR would be $55 for an original registration application, $55 for an original registration fee, $55 for a registration renewal, $80 for an original license application, $80 for an original license fee, and $80 for license renewal. Also, TDLR estimates that beginning in fiscal year 2006, a $10 per licensee/registrant cost would be included in other costs to reflect anticipated charges by TexasOnline. This additional cost is included in the renewal fees, which would be take effect in fiscal year 2007. Based on TDLR's analysis, it is assumed that a majority of the licensees would pay the two-year licensing fee beginning in fiscal year 2006 and that the remaining licensees would pay beginning in fiscal year 2007. TDLR estimates a General Revenue increase of $368,000 in fiscal year 2006 for 6,000 applicants, $50,300 in fiscal year 2007 for 800 applicants, $233,750 in fiscal year 2008 for 3,900 applicants, $60,200 in fiscal year 2009 for 990 applicants, and $232,500 in fiscal year 2010 for 3,800 applicants. Under current law, the agency is required to cover its operation costs with generated revenue. TDLR estimates to generate sufficient General Revenue funds in fiscal years 2006 and 2007 to cover the costs associated with the implementations of the bill for the 2006-07 biennium.

TDLR estimates the duties specified under the bill would require an Administrative Assistant III, a Legal Assistant II, and one half Accountant II. Salaries for fiscal years 2006 through 2010 would be $31,356 for one Administrative Assistant III, $33,312 for one Legal Assistant II, and $15,678 for one half an Accountant II.

The Department of Public Safety's (DPS) criminal history check would cost $15 and the Federal Bureau of Investigation's criminal history check would cost $24. The bill would have a one-time increase of 3,400 fingerprint-based certified criminal history checks received by DPS' Crime Records Division. According to DPS, the bill would have no fiscal impact to the agency.

Technology

According to TDLR, the technology fiscal impact is estimated to be $5,750 in fiscal year 2006 for personal computers, printers, and supporting equipment.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 452 Department of Licensing and Regulation

LBB Staff: JOB, LB, MW, RR

By: Wentworth   S.B. No. 165
      (Hartnett)
Substitute the following for S.B. No. 165:

By: Hartnett   C.S.S.B. No. 165

A BILL TO BE ENTITLED

1   AN ACT

2   relating to the regulation of private process servers; providing

3   penalties.

4   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5   SECTION 1.   The Civil Practice and Remedies Code is amended

6   by adding Title 8 to read as follows:

7   TITLE 8.   CIVIL PROCESS

8   CHAPTER 191.   PRIVATE PROCESS SERVERS

9   SUBCHAPTER A.   GENERAL PROVISIONS

10   Sec. 191.001.   DEFINITIONS. In this chapter:

11   (1)   "Civil court" includes:

12   (A)   a civil district court;

13   (B)   a family district court;

14   (C)   a county court at law;

15   (D)   a probate court;

16   (E)   a justice court; and

17   (F)   a small claims court.

18   (2)   "Civil process" means all process issued or

19   sanctioned by a civil court, except that the term does not include

20   service of any writ that requires the actual taking of possession of

21   a person, property, or thing or an enforcement action required of or

22   directed to a peace officer related to the taking of possession of a

23   person, property, or thing.

24   (3)   "Commission" means the Texas Commission of

1   Licensing and Regulation.

2   (4) "Constable" means a constable, deputy constable,

3   or reserve deputy constable.

4   (5) "Department" means the Texas Department of

5   Licensing and Regulation.

6   (6) "Executive director" means the executive director

7   of the department.

8   (7) "Person" means an individual.

9   (8) "Private process server" means a person who serves

10   or offers to serve civil process.

11   (9) "Public servant" has the meaning assigned by

12   Section 1.07, Penal Code.

13   (10) "Sheriff" means a sheriff, deputy sheriff, or

14   reserve deputy sheriff.

15   Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter

16   does not apply to a sheriff or constable engaged in the discharge of

17   that person's official duties. A sheriff or constable who serves

18   civil process other than in the performance of official duties must

19   be licensed under this chapter.

20   (b) This chapter does not apply to an investigator who is a

21   peace officer employed by a county or district attorney in this

22   state engaged in the discharge of that person's official duties or

23   in the delivery of nonjudicial notices. An investigator described

24   by this subsection who serves civil process other than in the

25   performance of official duties must be licensed under this chapter.

26   (c) This chapter does not limit or restrict the service of

27   process in this state as provided by a court order in a specific

1 civil case in which the presiding magistrate or judge has

2 determined the credibility of the person designated to serve the

3 process. A court may not issue a blanket or standing order

4 authorizing service of process.

5 (d) This chapter does not apply to service of a subpoena by a

6 court reporter certified under Chapter 52, Government Code.

7 [Sections 191.003-191.050 reserved for expansion]

8 SUBCHAPTER B. LICENSE REQUIREMENTS

9 Sec. 191.051. LICENSE REQUIRED. (a) Except as provided

10 by Section 191.002, a person may not serve civil process in this

11 state unless the person is licensed under this chapter.

12 (b) A person who is not a license holder and who is not

13 exempt under Section 191.002 may serve outside this state a civil

14 process issued by a civil court of this state if the person:

15 (1) is authorized by law, rule, or court order in the

16 person's jurisdiction to serve process;

17 (2) is a disinterested person competent to make an

18 oath of that fact; and

19 (3) makes a return of service under a declaration of

20 penalty of perjury.

21 (c) A person may not represent that the person is a licensed

22 private process server unless the person is licensed under this

23 chapter.

24 Sec. 191.052. LICENSE APPLICATION. (a) An applicant for a

25 process server license under this chapter must submit an

26 application on a form prescribed by the commission. To be eligible

27 for a license under this section, an applicant must:

1   (1)   be at least 18 years of age;

2   (2)   demonstrate   honesty,   trustworthiness,   and

3 integrity;

4   (3)   submit the nonrefundable application fee; and

5   (4)   comply   with   the   requirements   adopted   under

6 Subsection (b).

7   (b)   Each   license   applicant   must   provide   proof   to   the

8 department in a manner acceptable to the department of completion

9 of a department-approved 10-hour course on civil process consisting

10 of at least eight hours of instruction on service of process and two

11 hours of instruction on department regulation and rules.

12   Sec. 191.053.   CRIMINAL   HISTORY   RECORD   CHECK.   (a)   Each

13 applicant   for   a   process   server   license   under   this   chapter   shall

14 disclose   to   the   department   in   the   manner   prescribed   by   the

15 commission   any   conviction   of   the   applicant   for   a   misdemeanor

16 involving moral turpitude or a felony.

17   (b)   On receipt of an original application for issuance of a

18 process   server   license,   the   department   shall   conduct   a   thorough

19 background investigation of each individual applicant to determine

20 whether   the   applicant   is   qualified   under   this   chapter.   The

21 investigation must include:

22   (1)   the   submission   of   fingerprints   by   the   applicant

23 for processing through appropriate local, state, and federal law

24 enforcement agencies; and

25   (2)   the   examination   by   the   department   of   law

26 enforcement records maintained by a local, state, or federal law

27 enforcement agency.

1   (c) On receipt of an application for renewal of a process

2   server license, the department shall conduct a background

3   investigation of each individual applicant to determine whether the

4   applicant is qualified under this chapter. The investigation must

5   include examination by the department of law enforcement records

6   maintained by a local, state, or federal law enforcement agency.

7   (d) A background check under this section and the

8   department's consideration of any criminal conviction is governed

9   by:

10   (1) this chapter;

11   (2) Sections 411.093 and 411.122, Government Code; and

12   (3) Chapter 53, Occupations Code.

13   (e) The conviction of an applicant of a crime does not

14   automatically:

15   (1) disqualify the applicant;

16   (2) require revocation of a license; or

17   (3) require denial of an application for renewal of a

18   license.

19   (f) An application for issuance or renewal of a license by a

20   person who has pled guilty to a crime and been placed on deferred

21   adjudication in any jurisdiction shall be considered on the basis

22   of the criteria set forth in Subsections (d) and (e).

23   Sec. 191.054. ISSUANCE OF LICENSES. (a) The department

24   shall issue a process server license to an applicant who complies

25   with the appropriate requirements of this chapter, passes the

26   criminal history record check, as applicable, and pays all required

27   fees.

1   (b)   Except as provided by Subsection (c), the department

2 shall issue the license not later than the 60th day after the date

3 on which the application is received by the department.

4   (c)   If the department is notified by the Department of

5 Public Safety that a criminal history record check affecting an

6 applicant will not be completed within the 60 days prescribed by

7 Subsection (b), the department shall notify the applicant of the

8 delay.

9   Sec. 191.055.   TERM OF LICENSE; RENEWAL.   (a) A license

10 issued under this chapter expires on the first anniversary of the

11 date of issuance.

12   (b)   The department shall send a renewal notice to each

13 license holder not later than the 90th day before the date of

14 expiration of the license.

15   (c)   A license holder may renew the license by submitting to

16 the department before the expiration date, on a form prescribed by

17 the commission, a renewal application accompanied by the renewal

18 fee.   To renew a license, the license holder must also present

19 evidence satisfactory to the department of completion, before the

20 expiration of the license, of department-approved continuing

21 education consisting of at least four hours of instruction.

22   [Sections 191.056-191.100 reserved for expansion]

23   SUBCHAPTER C.   PRACTICE BY LICENSE HOLDERS

24   Sec. 191.101.   POWERS AND DUTIES OF LICENSE HOLDERS.   (a) A

25 license holder may serve civil process in the manner provided by law

26 for service by sheriffs and constables.   The person may serve the

27 process anywhere in this state.

1   (b) A license holder may determine the location of an

2   individual for the purpose of serving civil process.

3   (c) A license holder may serve all civil process, except for

4   a citation in an action of forcible entry and detainer or a civil

5   process requiring that an enforcement action be physically enforced

6   by the person delivering the civil process.

7   (d) A license holder may not serve a civil process in any

8   action in which the license holder is an interested party.

9   (e) An employee of an attorney or a law firm may not serve a

10   civil process, except a subpoena under Rule 176, Texas Rules of

11   Civil Procedure, in an action in which the employing attorney or law

12   firm is counsel to a party.

13   (f) A license holder may not have a firearm on the license

14   holder's person when in the act of serving civil process, unless the

15   license holder is also a peace officer or an honorably retired peace

16   officer authorized to carry a firearm. A weapon may not be visible

17   during the delivery of civil process.

18   Sec. 191.102. COSTS. A fee charged and collected by a

19   license holder for service of process may be charged as costs in a

20   judicial proceeding. Fees charged by a license holder for service

21   of process exceeding the service of process fees set by the

22   commissioners court in the county in which the case is pending may

23   not be charged as costs in a judicial proceeding unless otherwise

24   approved by the judge presiding over the case.

25   Sec. 191.103. PUBLIC SERVANT. An assault on a license

26   holder during the delivery of civil process shall be treated as an

27   assault on a public servant. A county is not liable for the actions

1 of a license holder unless the license holder is an employee of the

2 county.

3 Sec. 191.104. IDENTIFICATION NUMBER. (a) The department

4 shall issue to each license holder a unique identification number.

5 (b) The unique identification number of the private process

6 server must be included on or attached to each valid process return

7 and each copy of process served. The license holder is not required

8 to provide with the service any other department information.

9 Failure to include the person's unique identification number on

10 each valid process return or on the copy does not render the service

11 of process invalid.

12 (c) The department shall issue to each license holder a

13 photo identification card with the person's unique identification

14 number on the card. The department shall determine the size,

15 design, and content of the identification card. The card remains

16 the property of the state and must be returned on demand by the

17 department.

18 (d) A license holder shall produce the license holder's

19 identification card to any person requesting it during the

20 performance of service of process.

21 (e) An identification card, badge, insignia, seal, patch,

22 or other form of identification that may be construed to be that of

23 a peace officer may not be worn or displayed by a license holder.

24 Sec. 191.105. RETURN OF SERVICE OF PROCESS. The return of

25 service completed by the license holder may be attached to a

26 court-issued return of service. The return of service is not

27 required to be verified but must be signed by the license holder,

8

1 under penalty of perjury, verifying the truthfulness of the return

2 for any process delivered. The return of service shall be returned

3 to the party requesting service or, at the party's direction, filed

4 with the appropriate court.

5 [Sections 191.106-191.150 reserved for expansion]

6 SUBCHAPTER D. DEPARTMENT ENFORCEMENT

7 Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission

8 may deny, suspend, or revoke a license and the commission may impose

9 an administrative penalty under Subchapter F, Chapter 51,

10 Occupations Code, on a finding that the license holder has:

11 (1) refused to permit an examination by the department

12 of the records required to be maintained under rules adopted by the

13 commission;

14 (2) violated this chapter, a rule implementing this

15 chapter, or an order of the executive director or commission;

16 (3) knowingly made a false or fraudulent return of

17 service; or

18 (4) been convicted of a misdemeanor that directly

19 relates to the duties and responsibilities involved in performing

20 the duties of a process server or of any felony.

21 (b) Proceedings for the denial, revocation, or suspension

22 of a license, for the imposition of an administrative penalty, and

23 for an appeal from the proceeding are governed by Chapter 51,

24 Occupations Code, and Chapter 2001, Government Code.

25 (c) The commission may not suspend or revoke a license or

26 impose an administrative penalty on the basis of a determination

27 that the license holder has:

1   (1)   made not more than three unintentionally defective

2   returns of service in any 12-month period as long as a corrected

3   return is made to the appropriate recipient within a reasonable

4   time; or

5   (2)   effected   service   employing   a   deceptive   or

6   misleading method as long as the method is legal.

7   [Sections 191.152-191.200 reserved for expansion]

8   SUBCHAPTER E. PENALTIES

9   Sec. 191.201.   CRIMINAL PENALTIES. (a) A person commits an

10   offense if the person practices as a private process server and is

11   not authorized to do so under this chapter. An offense under this

12   subsection is a Class C misdemeanor, unless it is shown on the trial

13   of the offense that the defendant has previously been convicted

14   under this subsection, in which event the offense is a Class A

15   misdemeanor.

16   (b) A person commits an offense if the person knowingly or

17   intentionally falsifies a return of civil process. An offense

18   under this subsection is a Class A misdemeanor unless the person's

19   intent is to defraud or harm another, in which event the offense is

20   a state jail felony.

21   SECTION 2. Section 154.005(d), Local Government Code, is

22   amended to read as follows:

23   (d) A constable may receive, in addition to Subsection (c),

24   all fees, commissions, or payments for delivering notices required

25   by Section 24.005, Property Code, relating to eviction actions.

26   Notices may only be delivered when not in conflict with the official

27   duties and responsibilities of the constable. A constable

1   delivering said notices must not be wearing upon his or her person a

2   uniform or any insignia which would usually be associated with the

3   position of constable nor may the constable use a county vehicle or

4   county equipment while delivering said notices. [For purposes of

5   collecting fees for serving said notices, a constable is considered

6   a private process server.]

7   SECTION 3. (a) Except as provided by Subsection (b) of

8   this section, Chapter 191, Civil Practice and Remedies Code, as

9   added by this Act, takes effect September 1, 2005.

10   (b) Sections 191.051 and 191.201, Civil Practice and

11   Remedies Code, as added by this Act, take effect March 1, 2006.

12   SECTION 4. Notwithstanding Section 191.052, Civil Practice

13   and Remedies Code, as added by this Act, a person who provides proof

14   to the Texas Department of Licensing and Regulation in a manner

15   satisfactory to the department that the person is named or

16   included, by the terms of standing orders promulgated by any county

17   of this state that required named persons to have completed process

18   server training equivalent to that required by Section 191.052,

19   Civil Practice and Remedies Code, as added by this Act, as one

20   authorized to serve civil process in this state, is entitled to a

21   license under this chapter without complying with the requirement

22   of instruction on service of civil process if the person meets all

23   other requirements of that section, including the completion of two

24   hours of instruction on law and rules.

25   SECTION 5. Except as provided by Section 3 of this Act, this

26   Act takes effect September 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

5-17-05
(date)

Sir:

We, your COMMITTEE ON JUDICIARY

to whom was referred ___SB 165___ have had the same under consideration and beg to report
back with the recommendation that it

( ) do pass, without amendment.
( ) do pass, with amendment(s).
(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

(X) yes ( ) no A fiscal note was requested.
( ) yes (X) no A criminal justice policy impact statement was requested.
( ) yes (X) no An equalized educational funding impact statement was requested.
( ) yes (X) no An actuarial analysis was requested.
( ) yes (X) no A water development policy impact statement was requested.
( ) yes (X) no A tax equity note was requested.

( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor ___Hartnett___

Joint Sponsors: _____ / _____ / _____
Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Hartnett, Chair	X			
Hughes, Vice-chair				X
Alonzo	X			
Gonzales	X			
Hopson	X			
Keel				X
Solis	X			
Straus	X			
Van Arsdale	X			

Total

___7___ aye
___0___ nay
___0___ present, not voting
___2___ absent

___Will Hartnett___
CHAIR

BACKGROUND AND PURPOSE

In 1978, the Texas Supreme Court gave private process servers the authority to deliver and serve subpoenas. The court further extended the authority of the servers by giving them authority to deliver all citations under rule 103, Texas Rules of Civil Procedure. As a result, numerous private process serving companies have been established throughout Texas. There is no uniform requirement for background checks or uniform qualification to serve process throughout the state. C.S.S.B. 165 establishes the regulation and licensing of private process servers through the Texas Commission of Licensing and Regulation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution. However, the rulemaking authority of the Texas Department of Licensing and Regulation is implicitly expanded to cover the subject matter of the act. It is anticipated that rules will be adopted by the TDLR to implement this bill.

ANALYSIS

The bill establishes a statewide licensing requirement and sets uniform standards for private process servers. Civil process is defined to include all process issued or sanctioned by a trial level court. All unexempted persons are prohibited from serving civil process unless the person is licensed, and the bill contains requirements for out of state service of Texas civil process. To obtain a license, a person must be at least 18 years old, demonstrate honesty, trustworthiness and integrity, pay a fee and complete a 10 hour course of instruction. In addition, applicants must disclose convictions for felonies and misdemeanors involving moral turpitude. The TDLR will conduct local, state and federal criminal background checks on all applicants. The license must be renewed annually and renewal requires 4 hours on continuing education and payment of another fee. A license holder may serve all civil process except for a citation in an action of forcible entry and detainer and process requiring that physical enforcement action be taken by the person delivering the process. Law firm employees and certified court reporters are exempted from the act with regard to service of subpoenas under Rule 176. License holders are required to produce their TDLR issued identification cards to any person requesting it during service. Servers may not carry a firearm unless they are peace officers or honorably retired peace officers. Enforcement of the act is by license suspension or revocation or by criminal prosecution. A first offense for violation is a class C misdemeanor. Subsequent offenses are class A.
The act does not apply to a sheriff or constable while on duty. The act prohibits standing or so called blanket orders authorizing service of process, but retain the right to issue the right to unlicensed persons to serve process in individual cases.

EFFECTIVE DATE

Sections 191.051 and 191.201, Civil Practice and Remedies Code, as added by the act, take effect March 1, 2006, otherwise the act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes the dual licensing requirement of the original by eliminating the requirement of a business license. The substitute deletes references in the original to business

registration. The substitute also deletes several types of process from the prohibitions in the original bill against service by private process servers and adds a prohibition against service of civil process requiring that an enforcement action be physically enforced by the person delivering the civil process. The requirement that returns of service be made within 5 business days is deleted. The exception from the act for court reporters is limited to subpoenas. The substitute reduces the continuing education requirement for renewal of a license to four hours from six hours. The provision in the original bill for summary suspension of a license is deleted. The substitute contains restrictions on the ability of the Department of Licensing and Regulation to suspend a license based on good faith mistakes in returns of service or obtaining service through deceptive means. The substitute amends the provision regarding law firm employees to allow them to serve subpoenas under Rule 176. The substitute amends the criminal penalty to make a first offense for serving process without a license a Class C rather than a Class A misdemeanor. Subsequent offenses would be Class A misdemeanors. The substitute contains a new section providing an exemption to certain private process servers applying for licenses from a portion of the initial education requirements.

C.S.S.B. 165 79(R)

SB 165

May 2, 2005	2:00PM	or upon final adjourn./recess

Considered in public hearing
Testimony taken in committee (See attached witness list.)
Left pending in committee

May 16, 2005	2:00PM	or upon final adjourn./recess

Considered in public hearing
Testimony taken in committee (Legislator(s) only.)
Left pending in committee

May 17, 2005	upon lunch recess

Considered in formal meeting
Committee substitute considered in committee
Reported favorably as substituted

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SB 165
HOUSE COMMITTEE REPORT
Judiciary Committee

May 2, 2005 - 2:00PM or upon final adjourn./recess

For:	Cromwell, Dennis M. (Self)
	Goodman Manger, Barbara (Self)
	Hickman, Ron (Self and Justices of the Peace and Consables Assoc of Texas)
	Weeks, Carl (Self and Texas Process Servers Association)
Against:	Adelstein, Larry (Self)
	Deel, Billy D. (Self)
	Gammon, William B. (Self)
	McCurry, W.F. (Self)
	McMichael, Dana (Self and Assured Civil Process Agency)
	Murphy, Jim (see copy of signed petition 43 process servers and lawyers information on petition)
	Pendergrass, Tod (Self and Certified Civil Process Servers Assoc.)
	Placek, R. Scott (Self)
On:	Hobbs, Lisa (Supreme Court of Texas)
	Kuntz Jr., William H. (Texas Department of Licensing and Regulation)

Registering, but not testifying:

For:	Anderson, Robert E. (Self)
	Campos Jr., Charlie (Self and South Texas Justices of the Peace and Constables Assoc)
	Chism, John E. (Self)
	Freeman, Gary (Self and Justice of the Peace and Constables Asso. of Tx.)
	Keeney, Rick (Professional Civil Process of Texas Inc.)
	Lacey, Cecil (Self and Harris Co. Pct. #4 Constable's Dept)
	Watson, Andrew (Self)
	Weeks, Michael (Self)
Against:	Duval Jr., Morris (Self)
	Foreman, Lannie R. (Self)
	Gairo, Anthony (Self)
	Ronje, Santos (Self)

4)

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 17, 2005

TO: Honorable Will Hartnett, Chair, House Committee on Judiciary

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB165 by Wentworth (Relating to the regulation of private process servers; providing penalties.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB165, Committee Report 2nd House, Substituted: an impact of $0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$0
2007	$0
2008	$0
2009	$0
2010	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from GENERAL REVENUE FUND 1	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	($234,400)	$234,400	2.0
2007	($224,050)	$224,050	2.0
2008	($224,050)	$224,050	2.0
2009	($224,050)	$224,050	2.0
2010	($224,050)	$224,050	2.0

Fiscal Analysis

The provisions of the bill amend the Civil Practices and Remedies Code to require a person to be licensed or registered to serve civil process in this state and must be registered by the Texas Department of Licensing and Regulations (TDLR).

The executive director must issue process server licenses to applicants who comply with the requirements, pass a criminal history check; and pay the required fees. TDLR must conduct a background investigation of each applicant, to include processing of fingerprints through local, state, and federal law enforcement agencies, and examination of law enforcement records maintained by a local, state, or federal enforcement agency. The provisions require TDLR to issue a photo

identification card to a licensee, with the person's unique identification number on the card. The license or registration expires on the first anniversary of the date of issuance. Applicants for renewal must submit renewal application, renewal fee; and evidence of completion, prior to expiration of license and approved continuing education seminar consisting of at least six hours. It authorizes TDLR to deny, suspend or revoke a license or registration, and assess an administrative penalty.

The bill would take effect September 1, 2005.

Methodology

It is assumed that TDLR would set fees as necessary to offset the costs of implementing the provisions of the bill.

According to TDLR, the Texas Process Servers Association estimates the population that would be regulated is approximately 3,000 process server licensees each fiscal year.

TDLR estimates that beginning in fiscal year 2006, a $5 per licensee/registrant cost that total $132,000 would be included in other costs to reflect anticipated charges by TexasOnline. This additional cost is included in the renewal fees, which would be take effect in fiscal year 2007, which total $136,400.

TDLR estimates the duties specified would require an Administrative Assistant III and one Legal Assistant II. Salaries for fiscal years 2006 through 2010 would be $31,356 for one Administrative Assistant III and $33,312 for one Legal Assistant II plus $19,232 in benefit costs.

The Department of Public Safety's (DPS) criminal history check would cost $15 and the Federal Bureau of Investigation's criminal history check would cost $24. The bill would have a one-time increase of 3,400 fingerprint-based certified criminal history checks received by DPS' Crime Records Division. According to DPS, the bill would have no fiscal impact to the agency.

Technology

It is estimated the agency would need $5,750 in fiscal year 2006 for personal computers, printers, and supporting equipment.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety, 452 Department of Licensing and Regulation
LBB Staff: JOB, LB, MW, RR, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 2, 2005

TO: Honorable Will Hartnett, Chair, House Committee on Judiciary

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **SB165** by Wentworth (Relating to the regulation of private process servers; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB165, As Engrossed: an impact of $0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$0
2007	$0
2008	$0
2009	$0
2010	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from GENERAL REVENUE FUND 1	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	($254,740)	$254,740	2.5
2007	($244,390)	$244,390	2.5
2008	($244,390)	$244,390	2.5
2009	($244,390)	$244,390	2.5
2010	($244,390)	$244,390	2.5

Fiscal Analysis

The provisions of the bill amend the Civil Practices and Remedies Code to require a person to be licensed or registered to serve civil process in this state, and that a civil processor server business must be registered by the Texas Department of Licensing and Regulations (TDLR).

The executive director must issue process server licenses to applicants who comply with the requirements, pass a criminal history check; and pay the required fees. TDLR must conduct a background investigation of each applicant, to include processing of fingerprints through local, state, and federal law enforcement agencies, and examination of law enforcement records maintained by a local, state, or federal enforcement agency. The provisions require TDLR to issue a photo

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identification card to a licensee, with the person's unique identification number on the card. The license or registration expires on the first anniversary of the date of issuance. Applicants for renewal must submit renewal application, renewal fee; and evidence of completion, prior to expiration of license and approved continuing education seminar consisting of at least six hours. It authorizes TDLR to deny, suspend or revoke a license or registration, and assess an administrative penalty.

Methodology

It is assumed that TDLR would set fees as necessary to offset the costs of implementing the provisions of the bill.

According to TDLR, the Texas Process Servers Associations estimates the population that would be regulated is approximately 760 business process servers licenses and about 3,000 process server licenses for a total of 3,760 licenses issued each fiscal year.

TDLR estimates that beginning in fiscal year 2006, a $5 per licensee/registrant cost that total $132,000 would be included in other costs to reflect anticipated charges by TexasOnline. This additional cost is included in the renewal fees, which would be take effect in fiscal year 2007, which total $136,400.

TDLR estimates the duties specified would require an Administrative Assistant III, a Legal Assistant II, and one half Accountant II. Salaries for fiscal years 2006 through 2010 would be $31,356 for one Administrative Assistant III, $33,312 for one Legal Assistant II, and $15,678 for one half an Accountant II plus $23,894 in benefit costs.

The Department of Public Safety's (DPS) criminal history check would cost $15 and the Federal Bureau of Investigation's criminal history check would cost $24. The bill would have a one-time increase of 3,400 fingerprint-based certified criminal history checks received by DPS' Crime Records Division. According to DPS, the bill would have no fiscal impact to the agency.

Technology

It is estimated the agency would need $5,750 in fiscal year 2006 for personal computers, printers, and supporting equipment.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation
LBB Staff: JOB, LB, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 8, 2005

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB165 by Wentworth (Relating to the regulation of private process servers; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB165, Committee Report 1st House, Substituted: an impact of $0 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$0
2007	$0
2008	$0
2009	$0
2010	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from GENERAL REVENUE FUND 1	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	($254,740)	$254,740	2.5
2007	($244,390)	$244,390	2.5
2008	($244,390)	$244,390	2.5
2009	($244,390)	$244,390	2.5
2010	($244,390)	$244,390	2.5

Fiscal Analysis

The provisions of the bill amend the Civil Practices and Remedies Code to require a person to be licensed or registered to serve civil process in this state, and that a civil processor server business must be registered by the Texas Department of Licensing and Regulations (TDLR).

The executive director must issue process server licenses to applicants who comply with the requirements, pass a criminal history check; and pay the required fees. TDLR must conduct a background investigation of each applicant, to include processing of fingerprints through local, state, and federal law enforcement agencies, and examination of law enforcement records maintained by a local, state, or federal enforcement agency. The provisions require TDLR to issue a photo

identification card to a licensee, with the person's unique identification number on the card. The license or registration expires on the first anniversary of the date of issuance. Applicants for renewal must submit renewal application, renewal fee; and evidence of completion, prior to expiration of license and approved continuing education seminar consisting of at least six hours. It authorizes TDLR to deny, suspend or revoke a license or registration, and assess an administrative penalty.

Methodology

It is assumed that TDLR would set fees as necessary to offset the costs of implementing the provisions of the bill.

According to TDLR, the Texas Process Servers Associations estimates the population that would be regulated is approximately 760 business process servers licenses and about 3,000 process server licenses for a total of 3,760 licenses issued each fiscal year.

TDLR estimates that beginning in fiscal year 2006, a $5 per licensee/registrant cost that total $132,000 would be included in other costs to reflect anticipated charges by TexasOnline. This additional cost is included in the renewal fees, which would be take effect in fiscal year 2007, which total $136,400.

TDLR estimates the duties specified would require an Administrative Assistant III, a Legal Assistant II, and one half Accountant II. Salaries for fiscal years 2006 through 2010 would be $31,356 for one Administrative Assistant III, $33,312 for one Legal Assistant II, and $15,678 for one half an Accountant II plus $23,894 in benefit costs.

The Department of Public Safety's (DPS) criminal history check would cost $15 and the Federal Bureau of Investigation's criminal history check would cost $24. The bill would have a one-time increase of 3,400 fingerprint-based certified criminal history checks received by DPS' Crime Records Division. According to DPS, the bill would have no fiscal impact to the agency.

Technology

It is estimated the agency would need $5,750 in fiscal year 2006 for personal computers, printers, and supporting equipment.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation
LBB Staff: JOB, LB, DE

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 15, 2005

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: SB165 by Wentworth (Relating to the regulation of private process servers; providing penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB165, As Introduced: a positive impact of $61,650 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$118,600
2007	($56,950)
2008	$92,600
2009	($45,470)
2010	$95,250

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	($249,400)	$368,000	2.0
2007	($107,250)	$50,300	2.0
2008	($141,150)	$233,750	2.0
2009	($105,670)	$60,200	2.0
2010	($137,250)	$232,500	2.0

Fiscal Year	Change in Number of State Employees from FY 2005
2006	
2007	
2008	
2009	
2010	

Fiscal Analysis

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The bill would establish the regulation and licensing of private process servers through the Texas Department of Licensing and Regulation (TDLR) by adding Title 8 to the Civil Practice and Remedies Code.

The bill requires an applicant for an initial process server license to submit a sworn application on a form prescribed by TDLR and it also requires each applicant to disclose any conviction of the applicant for a misdemeanor involving moral turpitude or a felony. The bill would also require TDLR to issue a two-year process server license or an agent registration to an applicant who complies with the appropriate requirements explained in subchapter B, passes the criminal history record check, and pays all required fees. It would also require TDLR to send a renewal application to each license holder or registered agent not later than the 45th day before the date of expiration. The bill would provide a fee charged and collected by a license holder or registered agent for service of process may be charged as costs in a judicial proceeding. The bill would authorize TDLR to deny, suspend, or revoke a license or registration and to impose an administrative penalty under the Occupations Code, on a finding that a license holder or registered agent has failed to meet certain requirements.

The bill would take effect September 1, 2005.

Methodology

According to the Texas Department of Licensing and Regulation (TDLR), the Texas Process Servers Associations estimates the population that would be regulated to be approximately 900 process server licensees and 2,500 registered agents. According to the agency, biennial fees assessed by TDLR would be $55 for an original registration application, $55 for an original registration fee, $55 for a registration renewal, $80 for an original license application, $80 for an original license fee, and $80 for license renewal. Also, TDLR estimates that beginning in fiscal year 2006, a $10 per licensee/registrant cost would be included in other costs to reflect anticipated charges by TexasOnline. This additional cost is included in the renewal fees, which would be take effect in fiscal year 2007. Based on TDLR's analysis, it is assumed that a majority of the licensees would pay the two-year licensing fee beginning in fiscal year 2006 and that the remaining licensees would pay beginning in fiscal year 2007. TDLR estimates a General Revenue increase of $368,000 in fiscal year 2006 for 6,000 applicants, $50,300 in fiscal year 2007 for 800 applicants, $233,750 in fiscal year 2008 for 3,900 applicants, $60,200 in fiscal year 2009 for 990 applicants, and $232,500 in fiscal year 2010 for 3,800 applicants. Under current law, the agency is required to cover its operation costs with generated revenue. TDLR estimates to generate sufficient General Revenue funds in fiscal years 2006 and 2007 to cover the costs associated with the implementations of the bill for the 2006-07 biennium.

TDLR estimates the duties specified under the bill would require an Administrative Assistant III, a Legal Assistant II, and one half Accountant II. Salaries for fiscal years 2006 through 2010 would be $31,356 for one Administrative Assistant III, $33,312 for one Legal Assistant II, and $15,678 for one half an Accountant II.

The Department of Public Safety's (DPS) criminal history check would cost $15 and the Federal Bureau of Investigation's criminal history check would cost $24. The bill would have a one-time increase of 3,400 fingerprint-based certified criminal history checks received by DPS' Crime Records Division. According to DPS, the bill would have no fiscal impact to the agency.

Technology

According to TDLR, the technology fiscal impact is estimated to be $5,750 in fiscal year 2006 for personal computers, printers, and supporting equipment.

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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 452 Department of Licensing and Regulation

LBB Staff: JOB, LB, MW, RR

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S.B. No. _165_   By_Wentworth_

A BILL TO BE ENTITLED

AN ACT:

relating to the regulation of private process servers; providing penalties.

_1-10-05_	Filed with the Secretary of the Senate
FEB 0 1 2005	Read and referred to Committee on ___JURISPRUDENCE___
_____	Reported favorably _____
APR 1 1 2005	Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.
_____	Ordered not printed
_____	Laid before the Senate
APR 1 8 2005	Senate and Constitutional Rules to permit consideration suspended by: { ~~unanimous consent~~ _____ yeas, _____ nays
APR 1 8 2005	Read second time, _Amended_, and ordered engrossed by: { ~~unanimous consent~~ a viva voce vote _____ yeas, _____ nays
_____	Senate and Constitutional 3 Day Rule suspended by a vote of _____ yeas, _____ nays.
APR 1 9 2005	_Regular Order of Business suspended by u.c_
APR 1 9 2005	Read third time, _____, and passed by: { A viva voce vote _29_ yeas, _0_ nays

signature
SECRETARY OF THE SENATE

OTHER ACTION:

April 19,2005	Engrossed
_____	Sent to House

Engrossing Clerk _Mardi Alexander_

APR 1 9 2005	Received from the Senate
APR 2 1 2005	Read first time and referred to Committee on ___Judiciary___
MAY 1 7 2005	Reported ____favorably ~~(as amended)~~ (as substituted)
MAY 2 0 2005	Sent to Committee on (Calendars) ~~(Local & Consent Calendars)~~
_____	Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)
_____	Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting.
_____	Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)
_____	Returned to Senate.

CHIEF CLERK OF THE HOUSE

_____	Returned from House without amendment.
_____	Returned from House with _____ amendments.
_____	Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____ , Chairman; _____

_____ , _____ , and _____

_____ House granted Senate request. House conferees appointed: _____ , Chairman;

_____ , _____ , _____ .

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

$\Big\{$ a viva voce vote

_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

$\Big\{$ a viva voce vote

_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

$\Big\{$ a viva voce vote

_____ yeas, _____ nays